



234111

ATTORNEYS AT LAW

1666 K Street, NW  
Suite 500  
Washington, DC 20006  
T 202 887.1400  
F 202 466 3215

Peter W. Denton  
T 202 887 1422  
pdenton@nossaman.com

VIA HAND DELIVERY

April 22, 2013

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street SW  
Washington, DC 20423



ENTERED  
Office of Proceedings  
APR 22 2013  
Part of  
Public Record

**Re: STB Finance Docket No. 35732, Sonoma-Marín Area Rail Transit  
District—Acquisition Exemption—In Marin County, California**

Dear Ms. Brown

Enclosed for filing in the above-referenced docket are the original and ten copies of a Petition for Exemption of Sonoma-Marín Area Rail Transit District (the "District"). Also enclosed is a disc containing the enclosed filings and a check in the amount of \$6,800 for the filing fee for the Petition for Exemption.

The District is a "state government entity" within the meaning of the Board's filing fee waiver rule, 49 C.F.R. § 1002.2(e)(1), and is filing the Petition for Exemption on behalf of the general public. Under current Board policy on the Board's filing fee waiver rule, the District would not qualify for a fee waiver because it comes before the Board as a carrier. See *Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—Policy Statement*, 5 S.T.B. 352 (STB served Dec. 6, 2000). However, because the District is a rail carrier only because of certain residual common carrier rights held by the District, and because the District will expend public funds on this fee, the District requests that the Board nevertheless waive the filing fee.

Please time and date stamp the extra copy of the filings and return it with our messenger. If you have any questions, please contact me.

Respectfully submitted,

Peter W. Denton  
Attorney for Sonoma-Marín Area Rail Transit  
District

Enclosures

**FILED**  
APR 22 2013  
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TRANSPORTATION BOARD

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APR 22 2013

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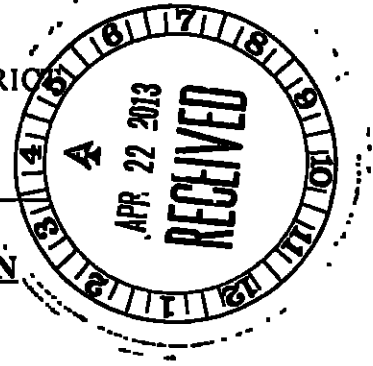
234111

BEFORE THE  
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35732

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT  
— ACQUISITION EXEMPTION —  
IN MARIN COUNTY, CALIFORNIA

VERIFIED PETITION FOR EXEMPTION



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Linda J. Morgan  
Kevin M. Sheys  
Peter W. Denton  
Nossaman LLP  
1666 K Street, NW  
Suite 500  
Washington, DC 20006

Counsel for Sonoma-Marin Area  
Rail Transit District

Dated: April 22, 2013

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 35732

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT  
— ACQUISITION EXEMPTION —  
IN MARIN COUNTY, CALIFORNIA

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**VERIFIED PETITION FOR EXEMPTION**

Sonoma-Marin Area Rail Transit District ("SMART"), a class III rail carrier<sup>1</sup> and a special district created pursuant to California law<sup>2</sup> to operate passenger rail service, hereby petitions the Surface Transportation Board (the "Board"), pursuant to 49 U.S.C. § 10502 and 49 C.F.R. Part 1121, for an exemption from the requirements of 49 U.S.C. § 10902 to permit SMART to acquire a railroad line between approximately MP 15.71 at Corte Madera, California and approximately MP 26.96 at Novato, California (the "Subject Line"), a distance of approximately 11.25 miles, within Marin County, California. The Subject Line is depicted in the map attached here as **Exhibit A**. As fully set forth herein, SMART did not properly obtain authority from the Board for its acquisition of the Subject Line in 2006. SMART intends, through this Petition for Exemption, to cure this omission, obtain the proper acquisition authority from the Board on a going-forward basis, and resolve any uncertainty associated with the status of any common carrier obligation associated with the Subject Line. Therefore, in accordance with 49 C.F.R. § 1121.3, SMART submits the following information:

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<sup>1</sup> SMART is a rail carrier as a result of a 2004 acquisition of the physical assets of a rail line, subject to an easement for freight service over the line and to an operating agreement subsequently providing for service. SMART retained a residual common carrier obligation over the line. See *Sonoma-Marin Area Rail Transit District—Acquisition Exemption—Nw. Pac. R.R. Auth.*, STB Finance Docket No. 34400 (STB served Mar. 10, 2004).

## I. BACKGROUND

On October 25, 2005, SMART reached an agreement to purchase railroad trackage and right-of-way from the Golden Gate Bridge, Highway and Transportation District ("GGBHTD"), County of Marin and Marin County Transit District, extending from MP 26.96 to MP 11.4 (the "San Rafael Line").<sup>3</sup> On March 27, 2006, SMART consummated this transaction and acquired the San Rafael Line. A copy of the transaction documents for this acquisition is attached as **Exhibit B**.

On March 20, 2006, SMART filed with the Board a verified notice of exemption under 49 C.F.R. § 1150.41 to acquire and operate the San Rafael Line (the "2006 Notice"). As discussed in the 2006 Notice, the transaction "involves the acquisition by a public agency [SMART] of real estate and rail facilities owned by other public agencies, [GGBHTD] and Marin County. The purpose of this transaction is to place this line in the ownership of an agency [SMART] that is legally authorized to operate passenger rail service on the line."

On January 31, 2008, the Board rejected the 2006 Notice.<sup>4</sup> The "Board staff [ ] repeatedly asked SMART for clarification of the notice with respect to what entity has or would have responsibility for providing freight service over the portion of the [Subject] Line that remains under the Board's jurisdiction," and SMART did not file "any clarification or response."<sup>5</sup> In its rejection decision, the Board stated that (1) "SMART fail[ed] to identify specifically what entity has the common carrier obligation to provide

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<sup>4</sup> Cal. Public Utilities Code § 105000 *et seq.*

<sup>3</sup> As discussed below, the San Rafael Line segment between MP 11.4 and MP 15.71 was previously abandoned and is not subject to the Board's jurisdiction, and therefore is not part of the Subject Line for the purposes of this proceeding.

<sup>4</sup> *Sonoma-Marin Area Rail Transit District—Acquisition and Operation Exemption—Nw. Pac. R.R.*, STB Finance Docket No. 34842, slip op. at 1 (STB served Jan. 31, 2008).

<sup>5</sup> *Id.*, slip op. at 1.

freight service over the [Subject] Line and from which it would acquire that common carrier obligation”, (2) “SMART state[d] that it would not fulfill [its common carrier obligation] because it would not provide freight service over the Line and it fails to identify any entity that could or would provide such service”; and (3) SMART neither disclosed the existence of a freight railroad with a common carrier obligation over the northern-most segment of the Subject Line between approximately MP 25.6 near Ignacio and the northern terminus of the Subject Line at MP 26.96 (the “Novato Segment”), nor provided notice that such common carrier obligation “has changed or soon will change” to a different carrier.<sup>6</sup>

SMART had intended to respond to the Board’s inquiries, but became fully consumed by its commuter rail project budget challenges, the need to reconfigure the project to fit available funds, and the procurement of design-build services for the project, all with very limited staffing. Further, SMART did not accurately report the status of the various segments of the San Rafael Line in the 2006 Notice. SMART apologizes to the Board for these oversights.

SMART is currently rebuilding the line for use as part of its contemplated intrastate commuter passenger rail system, which SMART expects to open in 2015 or 2016. The segment of the San Rafael Line between MP 11.4 and MP 15.71 is abandoned and not subject to the Board’s jurisdiction (and therefore not a portion of the Subject Line at issue here),<sup>7</sup> and the remaining segment of the San Rafael Line, between MP

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<sup>6</sup> *Id.*, slip op. at 1-2.

<sup>7</sup> See *Nw. Pac. R.R. Co.—Abandonment Between Detour and Sausalito, Marin County, CA*, ICC Finance Docket No. 26736 (served Oct. 20, 1971) (this abandonment covered rail line from MP 6.841 to MP 14.331, only the portion from MP 11.4 to MP 14.331 is part of the San Rafael Line at issue here); *Nw. Pac. R.R. Co.—Discontinuance Exemption—Operation in Marin County, CA*, ICC Docket No. AB-14 (Sub-No. 3) (1982) (covering MP 14.329 to MP 15.730). Since these two abandonment filings, and as discussed further herein, predecessors

15.71 and MP 26.96 is a line of railroad subject to the Board's jurisdiction and constitutes the Subject Line. Common carrier service was previously discontinued over the Subject Line segment between MP 15.71 and MP 25.6.<sup>8</sup> The Northwestern Pacific Railroad Company ("NWPCo") currently operates freight service and has a common carrier obligation over the Novato Segment (between MP 25.6 and MP 26.96) pursuant to a contract with the North Coast Railroad Authority ("NCRA"), which holds an exclusive freight easement over that segment.<sup>9</sup> SMART retains a residual common carrier interest on the Novato Segment, and should NWPCo relinquish its common carrier obligation, NCRA in the first instance or SMART in the second instance would contract with a freight operator to provide rail service on the Novato Segment.

## II. ENVIRONMENTAL AND HISTORIC

Pursuant to 49 C.F.R. § 1121.3, SMART must comply in this Petition with the environmental or historic reporting and notice requirements of 49 C.F.R. part 1105, if applicable. Through this Petition, SMART requests an exemption from the requirements of 49 U.S.C. § 10902 to permit SMART to acquire the 11.25-mile Subject Line. This acquisition will not result in any changes in carrier operations, as the current freight operator will continue to provide service on the Novato Segment and rail service has long been discontinued on the remainder of the Subject Line. Additionally, further STB approval is required to abandon the Subject Line, and there are no plans to dispose

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in interest to SMART, and the Board and its predecessor agency, have treated the segment between MP 15.71 and MP 15.73 as within the Board's jurisdiction. Therefore, for the avoidance of doubt, the southern terminus of Subject Line extends to include that 0.02 mile segment.

<sup>8</sup> See *Nw Pac. R.R. Co.—Discontinuance Exemption—Operation in Marin County, CA*, ICC Docket No. AB-14 (Sub-No. 6X) (ICC served June 9, 1989). Since this discontinuance, and as discussed further herein, other carriers and the Board have treated the segment of this previously discontinued line between MP 25.6 and MP 25.821 as an active line of railroad.

of or alter properties subject to STB jurisdiction that are 50 years old or older. Therefore, pursuant to 49 C.F.R. §§ 1105.6(c)(2) & 1105.8(b)(1), this Petition does not require an Environmental or Historic Report

### III. ARGUMENT

As fully set forth above, SMART did not accurately report the status of the various segments of the San Rafael Line, did not respond to the Board's inquiries with respect to the 2006 Notice, and consummated its acquisition without required Board approval. SMART apologizes to the Board for these oversights and requests authority for the acquisition on a going-forward basis through this Petition. As discussed above, SMART properly disclosed the purpose of this transaction in its 2006 Notice, which remains unchanged, and no prejudice to any party will result from these oversights.<sup>9</sup> Rail service on the majority of the Subject Line has been discontinued for decades, and the common carrier obligation over the active portion of the Subject Line (the 1.36-mile Novato Segment) has been held by freight operators other than SMART or its predecessor in interest pursuant to a freight easement for the duration of time between SMART's acquisition and the filing of this Petition.<sup>10</sup>

Pursuant to 49 U.S.C. § 10902, the Board may authorize SMART, a Class III rail carrier, to acquire and operate an additional rail line unless it finds that the transaction is inconsistent with the public convenience and necessity. Under 49 U.S.C. § 10502, the Board must exempt SMART's acquisition from the requirements of § 10902 when the

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<sup>9</sup> See *Nw. Pac. R.R. Co.—Change in Operators Exemption—N. Coast R.R. Auth., SMART and Nw. Pac. Ry. Co., LLC*, STB Finance Docket No. 35073 (STB served Aug. 30, 2007).

<sup>10</sup> See, e.g., *New Brunswick Ry. Co.—Continuance in Control Exemption—Me N. Ry. Co.*, STB Finance Docket No. 35520, et al., slip op. at 3 (STB served Sept. 26, 2011) ("*New Brunswick*").

<sup>11</sup> Further, SMART does not request that the Board grant retroactive authority for the acquisition, only that the Board authorize the transaction on a going-forward basis.

Board finds that (1) the application of § 10902 is not necessary to carry out the transportation policy of 49 U.S.C. § 10101, and (2) either (a) the transaction is of limited scope, or (b) the application of § 10902 is not needed to protect shippers from the abuse of market power.

The Board's grant of the requested exemption from the approval requirements of § 10902 would be consistent with the standards of § 10502.<sup>12</sup> Detailed scrutiny of SMART's acquisition is not necessary to carry out the rail transportation policy here 49 U.S.C. § 10502(a)(1). The Board's grant of the exemption would minimize the need for Federal regulatory control over the rail transportation system (49 U.S.C. § 10101(2)), foster sound economic conditions in transportation (§ 10101(5)), reduce regulatory barriers to entry into the industry (§ 10101(7)), and provide for the expeditious handling and resolution of proceedings required or permitted to be brought before the Board (§ 10101(15)). The Board's grant of the requested exemption would not adversely affect other aspects of the rail transportation policy

Further, regulation of SMART's acquisition under § 10902 is not necessary to protect shippers from an abuse of market power. 49 U.S.C. § 10502(a)(2)(B). As set forth above, the majority of the Subject Line has discontinued rail service and does not serve shippers, and the freight rail operator with the common carrier obligation on the active Novato Segment portion of the Subject Line did not and will not change as a result of this transaction. In short, SMART's acquisition has not and will not change the operational access of shippers to transportation services,<sup>13</sup> and will have no impact

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<sup>12</sup> See, e.g., *V and S Ry., I.C.—Acquis. and Operation Exemption—Co. Dep't of Transp.*, STB Finance Docket No. 35664 (STB served Nov. 13, 2012) ("V&S").

<sup>13</sup> See *New Brunswick*, slip op. at 3.



(adverse or otherwise) on competition.<sup>14</sup> Because regulation of SMART's acquisition under § 10902 is not necessary to protect shippers from an abuse of market power, the Board need not address whether the acquisition is of "limited scope." 49 U.S.C. § 10502(a)(2)(A).<sup>15</sup> Nevertheless, SMART's acquisition of the 11.25-mile Subject Line, featuring only 1.36 miles of active line served by a separate freight operator, certainly qualifies as "limited" in scope.

#### **IV. CONCLUSION**

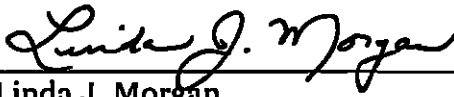
SMART apologizes to the Board for its oversight in initially acquiring the Subject Line. It respectfully requests that the Board grant this Petition for Exemption from the application requirements of § 10902 because detailed scrutiny of SMART's acquisition is not necessary to carry out the rail transportation policy, and regulation of the proposed transaction is not necessary in order to protect shippers from the abuse of market power. Furthermore, the acquisition is limited in scope. Granting SMART's Petition also will resolve any uncertainty associated with the 2006 acquisition of the San Rafael Line and in particular the status of any common carrier obligation associated with the line.

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<sup>14</sup> See *V&S*, slip op. at 3.

<sup>15</sup> See *New Brunswick*, slip op. at 3; *V&S*, slip op. at 4, n 5.

Respectfully submitted,

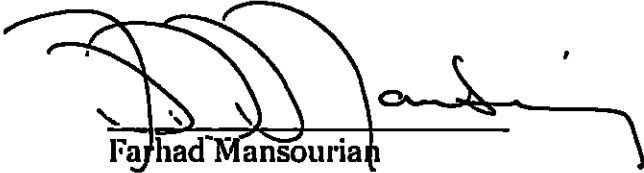
By 

Linda J. Morgan  
Kevin M. Sheys  
Peter W. Denton  
Nossaman LLP  
1666 K Street, NW  
Suite 500  
Washington, DC 20006  
*Counsel for Sonoma-Marin Area Rail Transit District*

Dated: April 22, 2013

**VERIFICATION**

I, Farhad Mansourian, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verification.



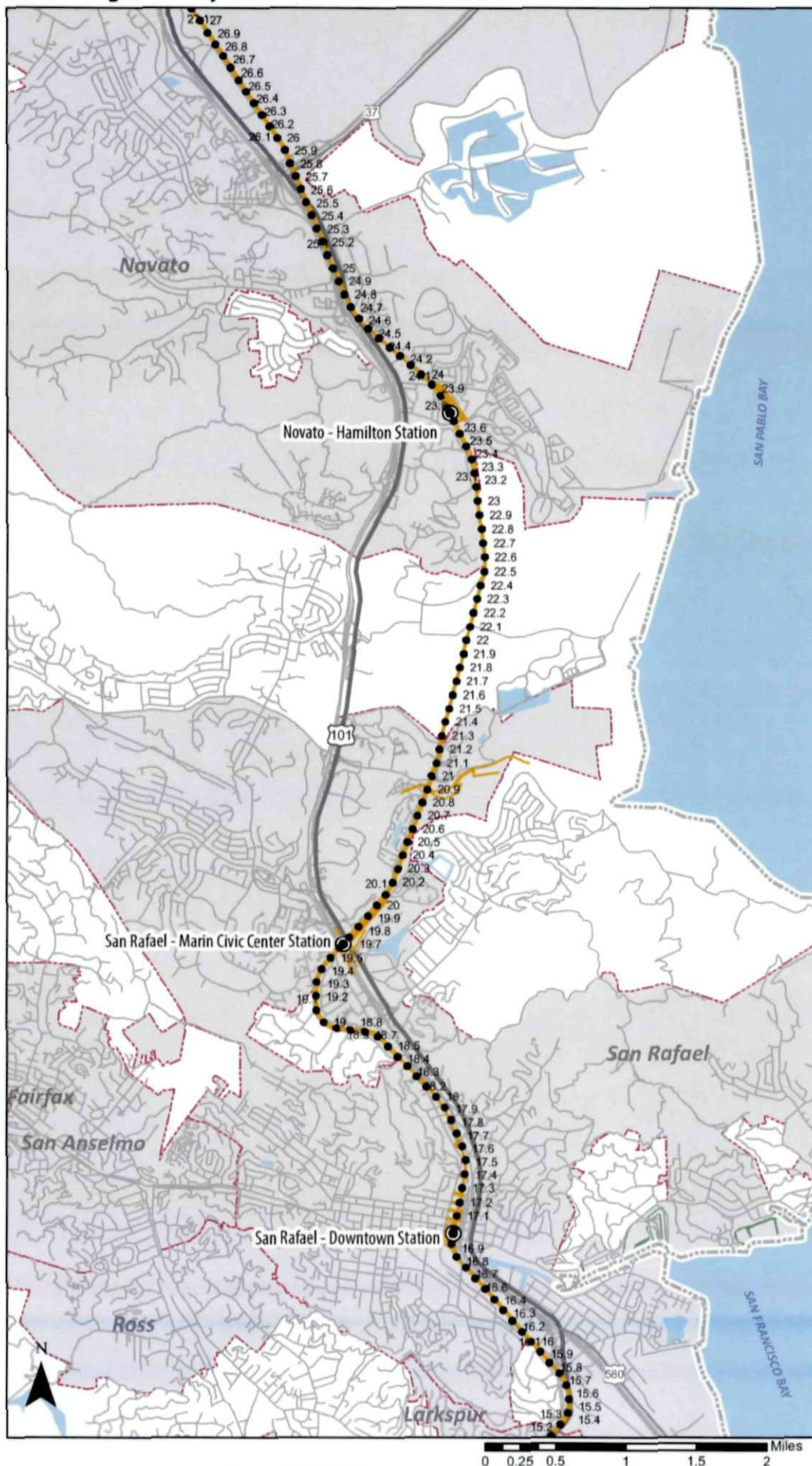
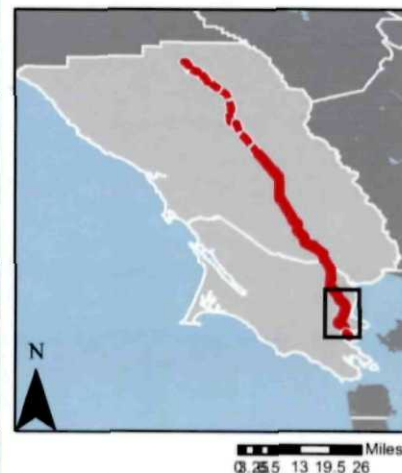
Farhad Mansourian

Executed on 4/18/2013

**EXHIBIT A**

**MAP OF THE SUBJECT LINE**

# SMART Right of Way between MP 15.71 and MP 26.96



## Legend

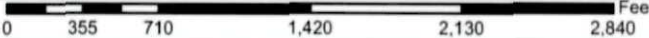
- SMART Mile Posts
- ⊙ SMART Stations
- Existing Right of Way
- SMART Counties
- Water
- State and National Parks
- Incorporated Cities



Novato Segment - MP 25.6 - MP 26.96



- Legend**
- SMART Mile Posts
  - Brazos Rail Line
  - Existing Right of Way
  - SMART Rail Project
  - SMART Counties
  - Incorporated Cities



**EXHIBIT B**  
**TRANSACTION DOCUMENTS**

## **MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding ("Agreement") is entered into this 25th day of October, 2005 by and between the Golden Gate Bridge, Highway and Transportation District, a public agency ("GGB"), the County of Marin, a public agency ("County"), the Marin County Transit District, a public agency ("MCTD") and the Sonoma Marin Area Rail Transit District, a public agency ("SMART"), (collectively referred to as the "parties").

### **RECITALS**

A. Pursuant to an Agreement of Purchase and Sale signed in 1984 by and between GGB, as Buyer, and Northwestern Pacific Railroad Company ("NWP") and One Market Street Properties, Inc., as Seller, as amended to date, and all ancillary documents thereto (collectively, the "Corte Madera Purchase Agreement"), GGB acquired a segment of the railroad right-of-way commonly known as the Corte Madera Right-of-Way from NWP MP 11.4 in the City of Corte Madera, California, to NWP MP 14.6 in the city of Larkspur, California, together with all appurtenances thereto, (collectively, the "Corte Madera ROW").

B. Pursuant to an Agreement of Purchase and Sale dated January 24, 1983 by and between GGB, County, and MCTD, as Buyer, and Northwestern Pacific Railroad Company ("NWP") and One Market Street Properties, Inc., as Seller, as amended to date, and all ancillary documents thereto (collectively, the "Larkspur Purchase Agreement"), GGB, County and MCTD acquired a segment of the railroad right-of-way commonly known as the Larkspur Right-of-Way from NWP MP 14.6 in the City of Larkspur, California, to NWP MP 15.71 in the city of San Rafael, California, together with all appurtenances thereto, (collectively, the "Larkspur ROW").

C. Pursuant to an Agreement of Purchase and Sale dated June 1, 1990 by and between GGB, as Buyer, and Southern Pacific Transportation Company ("SP"), predecessor in interest to Union Pacific Railroad Company ("UP"), and Northwestern Pacific Railroad Company ("NWP"), collectively as Seller, as amended to date, and all ancillary documents thereto (collectively, the "San Rafael Purchase Agreement"), GGB acquired a segment of the railroad right-of-way commonly known as the San Rafael Corridor Right-of-Way from NWP MP 15.71 in the City of San Rafael, California, to NWP MP 26.96 in the City of Novato, California, together with all appurtenances thereto, (collectively, the "San Rafael ROW"). The Corte Madera ROW, the Larkspur ROW, and the San Rafael ROW, are collectively referred to in this Agreement as the "ROW".

D. Pursuant to a lease dated May 13, 2002 ("Marin Sanitary Lease"), GGB, County and MCTD leased to Marin Sanitary District a portion of the San Rafael ROW along with certain adjacent property owned by GGB ("Marin Sanitary Property").

E. GGB constructed, maintains and operates in coordination with the City of San Rafael the San Rafael Transportation Center ("SRTC") across part of the San Rafael ROW and on separate property owned by GGB

F. In December 1998, GGB acquired from the State of California, Department of Transportation, approximately 3.35 acres of unimproved real property in the vicinity of



Cloverdale, California as more particularly described in Exhibit A to this MOU. As part of this transaction GGB acquired certain other commitments to provide right-of-way services to acquire a spur track suitable for turning trains and to pay up to \$192,000 to help construct such a facility (collectively, the "Cloverdale Property"). These transactions were documented in a Stipulation for Judgment in Condemnation, Judgment in Condemnation and Final Order of Condemnation (collectively, the "Cloverdale Agreement").

G. GGB and the State of California, Department of Transportation, entered into an agreement ("Gap Closure Agreement") dated November 21, 2002. Pursuant to this agreement, GGB agreed to permit a relocation of a portion of the ROW in San Rafael, California to the property described in Exhibit B to this Agreement in connection with the construction of a high occupancy vehicle lane on State Highway 101.

H. GGB has a reserved right to acquire a four acre parcel along the ROW in Novato, California (the "Station Site") for future development as a transit station or for transit purposes, pursuant to a Cooperative Agreement entered into between GGB and the City of Novato in 1995 ("Hamilton Agreement"). The Hamilton Agreement provides that upon written demand by GGB within a 25 year period expiring in December of 2020, the City of Novato must transfer its rights, title, and interest in the Station Site to GGB.

I. SMART was created pursuant to AB 2224, Chapter 341 of the Laws of 2002, for the purpose of providing a unified, comprehensive, institutional structure for the ownership and governance of a passenger rail system within the counties of Marin and Sonoma, California. The enabling legislation for SMART is established in Section 105000 et seq. of the California Public Utilities Code.

J. Public Utilities Code Section 105012 contemplates that GGB, County and MCTD may transfer their respective rights in the Corte Madera ROW, the Larkspur ROW, and the San Rafael ROW to SMART in furtherance of SMART's statutory objectives. The parties now desire to establish the terms and conditions by which GGB, County and MCTD will transfer ownership of the ROW, all appurtenances thereto, and certain specified assets related to it.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing, the parties agree as follows:

### **ARTICLE I**

#### **TRANSFER OF ASSETS**

1.1 GGB/County/MCTD Assets Defined. The term "GGB/County/MCTD Assets" shall consist of the following assets:

- a. the ROW as described in Exhibit C to this Agreement;
- b. all interests in leases, licenses and other agreements encumbering any of the ROW (collectively, the "Leases, Licenses and Other Agreements") except as otherwise provided herein with respect to the Marin Sanitary Property;

c. the Cloverdale Property and all rights and appurtenances connected therewith;

d. all contract rights, including all rights under the Corte Madera Purchase Agreement, the Larkspur Purchase Agreement, the San Rafael Purchase Agreement, the Cloverdale Agreement, the Hamilton Agreement, and the Gap Closure Agreement; and

e. all grant agreements, including GGB's responsibilities with respect to the various federal and state grant and funding agreements entered into in connection with the acquisitions of the ROW and related ownership and improvement matters.

**1.2 Transfer of GGB/County/MCTD Assets.** Subject to the terms and conditions of this Agreement, GGB, County and MCTD, to the extent of their respective ownership interests, hereby transfer, convey and assign to SMART all rights, title and interest in the GGB/County/MCTD Assets. All assets of GGB, County or MCTD of any kind and nature other than the GGB/County/MCTD Assets, as specifically described in this Agreement, shall be and remain the property of GGB, County or MCTD, respectively.

**1.3 Transfer Consideration.** SMART's full acceptance and performance of all of the terms and conditions of this Agreement, including without limitation, the protections for GGB, County and MCTD established in Sections 1.4, 1.5 and Article II below, shall be deemed full consideration for transfer of the GGB/County/MCTD Assets to SMART.

**1.4 Retained Rights.**

a. GGB has established the SRTC on a portion of the San Rafael ROW as well as on adjacent property separately acquired and improved by GGB. SMART and GGB acknowledge the public benefit derived from continued use of the SRTC as a vital North Bay transportation hub, and its utility in maintaining the integrity of the San Rafael ROW against loss by abandonment or non-use. Accordingly, in the Deed conveying the GGB/County/MCTD Assets to SMART, the form of which is attached hereto as **Exhibit D** ("Deed"), GGB shall retain from the San Rafael ROW a permanent easement ("SRTC Easement") for the limited purpose of operating and maintaining that portion of the SRTC located on the San Rafael ROW. The SRTC Easement shall be exclusive at all times prior to SMART's issuance of a notice to proceed on SMART's primary contract for construction of improvements necessary for commencement of revenue service over that portion of the San Rafael ROW subject to the SRTC Easement, and shall be non-exclusive thereafter. Once the SRTC Easement becomes non-exclusive, it shall be subordinate to SMART's proposed railroad operations over that portion of the San Rafael ROW subject to it in all respects.

(i) During the period of GGB's exclusive SRTC Easement, SMART shall have the right to access the SRTC Easement to conduct property management and maintenance activities and to conduct all appropriate pre-construction related activities related to SMART's proposed rail service, including without limitation, surveying, engineering, and environmental testing activities. SMART will notify GGB of its entry on the SRTC Easement area at the earliest practicable opportunity prior to entry but in no event later than seventy-two

(72) hours prior to entry, except in the case of an emergency involving public health or safety, in which case no notice prior to entry shall be required.

(ii) During the period of GGB's exclusive SRTC Easement, GGB shall allow MCTD to use that portion of the San Rafael ROW subject to the SRTC Easement to serve its fixed route local service passengers if MCTD's contract with GGB for the operation of local fixed route local service is terminated for any reason and MCTD commences to operate local fixed route service independently either by its own forces or pursuant to a contract with a service provider. In such circumstance, MCTD's use of and service to the SRTC shall be subject to administrative and operating procedures established by GGB applicable to all service providers who are granted use of that facility.

b. The parties anticipate that the SRTC will require redesign, relocation, construction and/or reconstruction of existing or new improvements (collectively, "Improvements") to facilitate local bus, regional bus and regional railroad transportation purposes. Current plans for the Improvements developed by SMART indicate that it will be necessary for SMART to acquire a property interest from GGB in a portion of the SRTC that is not part of the San Rafael ROW. The parties shall cooperate in the design and construction of Improvements wherever located to ensure that they accommodate the provision by SMART, GGB, MCTD and other public transportation providers of their then current and reasonably anticipated levels of passenger service. The parties shall also work cooperatively to maximize federal, state and local funding opportunities to pay for construction of the Improvements. Prior to the award by any party of a notice to proceed for construction of the Improvements, SMART and GGB shall enter into an agreement providing for full funding of construction of the Improvements, and if necessary, a program of joint use and ongoing operation and maintenance for the SRTC. Such an agreement shall become effective only after it has been considered and approved by the Board of Directors of both SMART and GGB.

c. SMART shall not encumber, assign, transfer or otherwise hypothecate the Hamilton Agreement contract rights without the prior written consent of GGB provided that SMART may assign these rights to a successor in interest to SMART, who shall take subject to the terms of this Agreement. In the event SMART does not exercise its rights under the Hamilton Agreement to acquire the Station Site by January 1, 2018, the Hamilton Agreement contract rights shall revert back to GGB without further action by the parties. Upon such a reversion, SMART shall have no further interest in the Hamilton Agreement and GGB may thereafter exercise its rights under the Hamilton Agreement and take ownership of the Station Site.

d. SMART shall accept title to that portion of the ROW subject to the Marin Sanitary Lease. As of the Closing, GGB and SMART shall enter into a Lease Management Agreement that will define their rights and obligations as co-lessors under the Marin Sanitary Lease in the form attached hereto as Exhibit E. In addition, GGB shall reserve in the Deed a twenty (20) foot non-exclusive private crossing easement to provide access to that portion of the Marin Sanitary Property west of the San Rafael ROW that is owned by GGB, as shown on the attached Exhibit F. As a condition to closing, GGB shall prepare, and GGB and SMART shall agree upon, a legal description for the easement set forth on Exhibit F.

(i) GGB hereby grants to SMART an option to purchase that portion of non-ROW real property ("Marin Sanitary Option Property") owned by GGB that is subject to the Marin Sanitary Lease, as set forth on the map attached hereto as Exhibit G to this Agreement, in its AS IS WHERE IS condition, subject to all faults, at a price equal to the greater of (a) the price paid by GGB for the Marin Sanitary Option Property plus a rate of return on the purchase price equal to GGB's average rate of return on its invested funds, compounded annually from the date the Marin Sanitary Option Property was acquired, and (b) the fair market value of said property as of the date of exercise of the Option, as determined by mutual agreement of SMART and GGB or by a mutually agreed upon process by which a third party appraiser determines fair market value. In any such valuation, it shall be assumed that adequate access exists across the ROW to allow the conduct of normal commercial activities on the subject property. Transfer of title to the Marin Sanitary Option Property shall be by quitclaim deed. SMART shall pay any and all closing, title insurance and other costs incurred in connection with any such transaction. The option will terminate if not exercised within five (5) years of the date of this Agreement. As a condition to closing, GGB shall prepare, and GGB and SMART shall agree upon, a legal description for the Marin Sanitary Option Property.

e. The parties acknowledge that GGB owns and has continuing obligations to restore a tidal wetlands area in Corte Madera, California known as the "Muzzi Marsh." The parties further acknowledge that GGB and the town of Corte Madera want to provide the public with access to the Muzzi Marsh. Accordingly, GGB shall reserve in the Deed: (1) a temporary crossing easement at Industrial Way in the town of Corte Madera ("Industrial Way Crossing Easement"), (2) a temporary longitudinal access easement ("Industrial Way Longitudinal Easement") from Industrial Way in the town of Corte Madera to the northern most boundary of the Muzzi Marsh, (3) a permanent public access easement ("Access Easement") from the southern boundary of the Muzzi Marsh to the northern most boundary of the Muzzi Marsh, and (4) a permanent construction and maintenance access easement ("Maintenance Easement") (collectively, the "Muzzi Marsh Easements"). The Muzzi Marsh Easements are depicted on the attached Exhibit H and will be described in the Deed at Closing based on mutually agreed upon legal descriptions prepared by GGB. The Industrial Way Crossing Easement and Industrial Way Longitudinal Easement will terminate upon SMART's issuance of a notice to proceed on SMART's primary contract for construction of improvements necessary to commencement of revenue service over those portions of the ROW subject to said easements. All of the Muzzi Marsh Easements will be assignable by GGB. If, based on an affirmative determination by SMART that is communicated to GGB, it is necessary to relocate the Access Easement to accommodate SMART's proposed rail service over the Corte Madera ROW, the Access Easement will be subject to relocation to a mutually agreeable location on the ROW at SMART's request. Such a relocation will provide comparable access to the ROW from the north and will be timed to coincide with SMART's issuance of a notice to proceed on SMART's primary contract for construction of improvements necessary to commencement of revenue service over the Corte Madera ROW.

f. At Closing, SMART shall grant to GGB a license to use a segment of the ROW in the vicinity of Larkspur Ferry Terminal as an overflow parking area for the terminal consistent with past use of this area for such purpose in the form of the license agreement attached hereto as Exhibit I ("Larkspur Parking License"). GGB's use of the licensed area will occur in such a manner that will be compatible with all appropriate pre-construction activities

related to SMART's proposed rail service, including without limitation, surveying, engineering, and environmental testing activities, as well as the possible development and use by SMART or others of a public bike path within the ROW. The Larkspur Parking License will be for a term commencing on the Closing Date and ending on the date of SMART's issuance of a notice to proceed on SMART's primary contract for construction of improvements necessary to commencement of revenue service over that portion of the ROW subject to it.

1.5 Station Site Use. SMART agrees to coordinate with GGB, MCTD and County in the future identification, design and construction of station sites on the ROW, including the Hamilton Station Site, to assure that appropriate access to the station sites will be provided to GGB, County and MCTD for the performance of their respective transportation responsibilities.

## ARTICLE II

### "AS IS" TRANSFER, ASSUMPTION OF OBLIGATIONS AND INDEMNITY

2.1 "AS IS" Transfer. SMART acknowledges and agrees that the GGB/County/MCTD Assets are conveyed to and accepted by SMART in an "as is" condition with all faults, subject to those rights as described in Section 1.4 of this Agreement and all other existing encumbrances of any type or nature. GGB, County and MCTD do not make any representations or warranties of any kind whatsoever, either express or implied, with respect to the ROW or any of such related matters, in particular, but without limitation, GGB, County and MCTD make no representations or warranties with respect to the use, condition, title, occupation or management of the GGB/County/MCTD Assets.

2.2 Receipt of Benefits and Assumption of Liabilities. Effective as of the Closing Date, SMART hereby shall (a) succeed to all of the benefits of ownership of the GGB/County/MCTD Assets, and (b) assume and perform or otherwise satisfy, any and all contracts, obligations, claims and/or other liabilities of any type or nature, whether currently existing or contingent, and whether or not disclosed by GGB, County or MCTD to SMART, that have been entered into or incurred by GGB, County and/or MCTD in connection with the acquisition, ownership, management and/or development of the GGB/County/MCTD Assets by GGB, County or MCTD prior to the Closing Date, including those related to the known or unknown physical and environmental condition of the ROW (collectively, "Liabilities"). Nothing herein is intended or should be deemed to limit SMART's right to contest the validity of any of the Liabilities with any third party in any way, it being the express intent of the parties for SMART to have the ability to do so. Prior to Closing, GGB shall inform SMART of any actually known contracts, obligations, claims, and/or other liabilities which pertain to the ROW, including without limitation, any state or federal administrative actions or any tort claims or demand letters.

### 2.3 Indemnification.

a. SMART shall fully indemnify, defend and hold harmless, GGB, County, MCTD, their successors and assigns and their directors, officers, employees and agents (each an "Indemnitee", and collectively, the "GGB, County and MCTD Indemnitees"), from and against all liability, claims, suits, sanctions, costs or expenses for injuries to or death of any person, or

any property damage, arising out of or resulting from (i) the Liabilities, (ii) any breach of any representation, warranty or covenant expressly established in this Agreement by SMART, and/or (iii) SMART's acquisition, ownership, management and/or development of the GGB/County/MCTD Assets after the Closing Date. SMART's obligation to defend shall include the payment of all reasonable attorneys' fees and all other costs and expenses of suit, and if any judgment is rendered against any person indemnified in this paragraph, SMART shall, at its expense satisfy and discharge the same.

b. GGB, County and MCTD shall fully indemnify, defend and hold harmless, SMART and its directors, officers, employees and agents (each an "Indemnitee", and collectively, the "SMART Indemnitees"), from and against all liability, claims, suits, sanctions, costs or expenses for injuries to or death of any person arising out of or resulting from any breach by GGB, County or MCTD of their respective representations, warranties and/or covenants expressly established in this Agreement. GGB, County and MCTD's obligation to defend shall include the payment of all reasonable attorneys' fees and all other costs and expenses of suit, and if any judgment is rendered against any person indemnified in this paragraph, GGB, County and/or MCTD shall, at their expense satisfy and discharge the same.

**2.4 Release.** Upon the Closing, SMART hereby releases and discharges GGB, County and MCTD Indemnitees, and each of them, from any and all claims, actions, debts, liabilities, demands, obligations, promises, acts, agreements, costs and expenses (including, without limitation, court costs and attorneys' fees), damages, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, whether arising, or accruing before or after the Closing Date, based on, arising out of, or in connection with the acquisition, ownership, management and/or development of the GGB/County/MCTD Assets by GGB, County or MCTD, including, without limitation, the Liabilities, SMART's ownership, management and/or development of the GGB/County/MCTD Assets after the Closing Date, and all matters directly or indirectly claimed or alleged between the parties in connection therewith or in any way related thereto. SMART agrees and acknowledges that this release applies to both known and unknown claims and agrees to waive the benefits of Civil Code §1542, which states as follows:

**"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE; WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."**

The Parties agree and represent that they may hereafter discover facts different from or in addition to those they now know or believe to be true in respect to the claims, demands, debts, liabilities, accounts, actions or causes of action herein released, and hereby agree that these releases shall be and remain in effect in all respects as complete, general and full releases as to the matters released, notwithstanding any such different or additional facts.

### **ARTICLE III**

#### **TITLE AND CLOSING**

3.1 At the Closing, GGB County and MCTD shall execute and deliver to SMART the Deed. Title in Sonoma County shall be evidenced by the issuance by North American Title Company (the "Title Company"), at SMART's cost, of a CLTA owner's policy of title insurance in an amount to be determined by SMART, insuring title in SMART to that portion of the ROW in Sonoma County, subject to any and all exceptions of title mutually agreeable to SMART and Title Company. Title in Marin County shall be evidenced by the issuance by Old Republic Title Company, at SMART's cost, of a CLTA owner's policy of title insurance in an amount to be determined by SMART, insuring title in SMART to that portion of the ROW in Marin County, subject to any and all exceptions of title mutually agreeable to SMART and Old Republic Title Company. The title insurance policies issued by North American Title Company and Old Republic Title Company shall collectively be referred to as the "Title Policy". GGB, County and MCTD expressly disclaim any warranty of title of the ROW.

### **ARTICLE IV**

#### **SMART'S CONDITIONS TO CLOSING**

The following are conditions precedent to SMART's obligation to accept the GGB/County/MCTD Assets:

4.1 Approval of Title. Within ten (10) days after opening of escrow, SMART, at its sole cost and expense, shall obtain a preliminary title report from the Title Company on the ROW ("Title Report"), together with copies of the documents underlying the exceptions contained therein. The Title Company shall deliver a copy of the Title Report to GGB, County and MCTD for informational purposes. Within thirty (30) days after receipt by SMART of the Title Report and the legal description of the ROW ("Title Contingency Date") SMART shall notify GGB, County and MCTD whether or not SMART accepts the state of title of the ROW or whether SMART disapproves of the state of title of the ROW and desires to terminate this Agreement. GGB, County and MCTD shall have no obligation to cure any title deficiencies identified by SMART. If this Agreement is terminated pursuant to this Section 4.1, SMART shall pay the Cost of Cancellation of the Escrow, and no party to this Agreement shall have any further rights or obligations under this Agreement (other than the Surviving Obligations). The term "Cost of Cancellation of the Escrow," as used herein shall be the costs accrued and charged by Title Company for the Cost of Cancellation of the Escrow only.

4.2 Inspections and Studies. For the period of time commencing on the Effective Date and ending at such time as is designated in writing by SMART but in no event later than ninety (90) days from the date of this Agreement ("Contingency Period"), SMART shall have the right to conduct any reasonable and non-destructive inspections, investigations, tests and studies (including, without limitation, investigations with regard to zoning, building codes and other governmental regulations, architectural inspections, engineering tests, economic feasibility studies, and soils, seismic and geologic reports and environmental testing) with respect to the

ROW as SMART may elect to make or maintain. The cost of any such inspections, tests and/or studies shall be borne by SMART.

(a) During the Contingency Period SMART and SMART's employees, agents, contractors, subcontractors and consultants (collectively, "SMART's Representatives") hereby are granted the right to enter upon the ROW, at reasonable times during ordinary business hours upon notice to GGB at least seventy-two (72) hours prior to entry, to conduct such reasonable and non-destructive inspections, investigations, tests and studies of the ROW as SMART may designate (including, without limitation, investigations with regard to zoning, building codes and other governmental regulations, architectural inspections, engineering tests, and soils, seismic and geologic reports and environmental testing). All such testing shall be conducted in a manner which minimizes interference with GGB's bus and other operations. The cost of all such inspections, tests and/or studies shall be borne solely by SMART. SMART shall, to the extent permitted by law, use its best efforts to keep confidential and not to disclose to any third party any information obtained or developed in connection with the GGB/County/MCTD Assets, including, but not limited to, all environmental reports, surveys, marketing reports, geotechnical reports, lot studies and improvement plans. In any event, SMART shall promptly notify GGB of any potential disclosure or request for disclosure prior to releasing or permitting the release of such information.

SMART shall indemnify, defend and hold GGB, MCTD and the County of Marin harmless from any and all claims, damages or liabilities arising out of or resulting from the entry onto or activities upon the ROW by SMART or SMART's Representatives or liens arising from SMART's due diligence review of the ROW. Prior to any entry on to the ROW by any contractor, subcontractor, consultant or agent engaged by SMART (each, a "Permittee"), said Permittee shall obtain a policy of commercial general liability insurance with a financially responsible insurance company acceptable to GGB covering the activities of such Permittee on or upon the ROW. This insurance shall provide a per occurrence limit of at least One Million and No/100ths Dollars (\$1,000,000.00) and an aggregate limit of at least Three Million and No/100ths Dollars (\$3,000,000.00). This policy of insurance shall name GGB, the County of Marin and MCTD as an additional insured, and shall (as to any loss arising from the acts or omissions of any of SMART's contractors, subcontractors, consultants or agents) be primary and non-contributing with any other insurance available to GGB, the County of Marin and MCTD. Prior to said Permittee's entry onto the ROW, SMART shall assure that said Permittee shall deliver to GGB a certificate of insurance evidencing that the foregoing insurance is in place. Additionally, SMART shall, at its own cost and expense, procure and maintain Workers' Compensation as required by Section 3700 et. seq. of the California Labor Code, or any subsequent amendments or successor acts thereto, governing the liability of employers to their employees.

Prior to the expiration of the Contingency Period, SMART shall deliver to GGB, the County of Marin, MCTD and Escrow Holder written notice ("Contingency Period Notice") of its approval or disapproval of the ROW. The failure of SMART to timely deliver the Contingency Period Notice shall be deemed to constitute SMART's disapproval of the ROW. If SMART disapproves of the ROW, this Agreement shall terminate and the parties will have no further obligations or rights to one another under this Agreement (other than the Surviving Obligations).



If this Agreement is terminated pursuant to this Section, SMART shall deliver to GGB, at no cost and without representation or warranty as to accuracy or correctness, (i) any and all documentation (including without limitation, leases, licenses, other agreements, environmental documentation, and title documentation,) regarding the GGB/County/MCTD Assets delivered by GGB to SMART ("Property Materials").

**4.3 Approval.** SMART's Board of Directors shall have approved this Agreement and the acceptance of assets contemplated by it. SMART's obligations to accept transfer of the ROW is expressly conditioned on SMART's approval prior to Closing, in its sole discretion, of the condition of the ROW. SMART's acknowledgment of the Certificate Acceptance to be delivered in connection with the Deeds shall be deemed SMART's approval of the condition of the ROW for this purpose.

**4.4 Regulatory Authority.** SMART shall have filed a notice of exemption with the Surface Transportation Board ("STB") in connection with SMART's acquisition of the ROW.

**4.5 Grant Funding Assurances.** SMART will have agreed to accept any terms and conditions to the acceptance of the GGB/County/MCTD Assets to it imposed by any state or federal funding authority that provided funding for their acquisition.

**4.6 Performance by GGB, County and MCTD.** GGB, County and MCTD shall have performed all of the obligations to be performed by them pursuant to this Agreement.

**4.7 CEQA/NEPA Compliance.** SMART shall have complied with the California Environmental Quality Act and the National Environmental Policy Act, as applicable, to transfer the ROW to SMART pursuant to this Agreement.

**4.8 Final Approval of Legal Descriptions.** SMART shall have verified and approved legal descriptions as prepared for Exhibits C, F, G and H

## **ARTICLE V**

### **GGB, COUNTY AND MCTD CONDITIONS TO CLOSING**

The following are conditions precedent to the obligation of GGB, County and MCTD to transfer their respective interests in the GGB/County/MCTD Assets.

**5.1 Approval.** The respective Board of Directors of GGB, the Marin County Board of Supervisors and the Board of Directors of MCTD shall each have approved this Agreement and the transfer of assets contemplated by it.

**5.2 Regulatory Authority.** SMART shall have filed a notice of exemption with the Surface Transportation Board ("STB") in connection with SMART's acquisition of the ROW.

**5.3 Grant Funding Assurance.** GGB, County and MCTD shall have received approval of the proposed transfer of the GGB/County/MCTD Assets to SMART from federal and state authorities that provided funding for the acquisition of the GGB/County/MCTD Assets, if any, by GGB, County and MCTD.

**5.4 SMART's Performance.** SMART shall have performed all of the obligations to be performed by it pursuant to this Agreement.

**5.5 CEQA/NEPA Compliance.** GGB, County and MCTD shall have complied with the California Environmental Quality Act and the National Environmental Policy Act, as applicable, to transfer the ROW to SMART pursuant to this Agreement.

**5.6 Final Approval of Legal Descriptions.** GGB, County and MCTD shall have verified and approved legal descriptions as prepared for Exhibits C, F, G and H

## ARTICLE VI

### CLOSING

**6.1 Opening of Escrow and Escrow Instructions.** Upon execution of this Agreement, the parties shall deposit one fully executed counterpart of this Agreement with Title Company and this instrument shall serve as the instructions to the Title Company for consummation of the transfer contemplated hereby. Title Company shall only be responsible for undertaking such matters in connection with the Closing as are specifically provided for herein or in any additional or supplementary escrow instructions delivered by the parties.

**6.2 Closing.**

a. **Closing Date** The consummation of the transaction contemplated by this Agreement and recording of the Deed (the "Closing" or "Close of Escrow") shall occur and delivery of all items to be made at the Closing under the terms of this Agreement shall be made within ninety (90) days of the date of this Agreement, or at such other date as the parties may agree upon (the "Closing Date").

b. **Notification; Settlement Statements.** If Title Company cannot comply with the instructions herein and to be provided, Title Company is not authorized to cause the recording of the Deeds or close this escrow. If Title Company is unable to cause the recording of the Deed, Title Company shall notify David J. Miller at (415) 777-3200, Patrick Faulkner at (415) 499-7160, and Gregory Dion at (707) 565-2421 without delay.

**6.3 Deliveries by GGB, County and MCTD.** Not later than one business day prior to the Closing Date, GGB, County and MCTD shall deposit with Title Company the following items:

a. **Deed.** The Deed from GGB, County and MCTD for their respective interests in the ROW, in the form of **Exhibit D** duly executed and acknowledged by GGB, County and MCTD;

b. **Assignment.** The Assignment and Assumption Agreement in the form of **Exhibit J** duly executed by GGB, County and MCTD whereby GGB, County and MCTD assign to SMART, and SMART assumes, their respective rights to the Leases, Licenses and Other Agreements;

c. Bills of Sale. Bills of Sale duly executed by GGB, County and MCTD, in the form of Exhibit K attached hereto;

d. Non-Foreign Status Certificates. Non-Foreign Status Certificates pursuant to Internal Revenue Code Section 1445 duly executed by GGB, County and MCTD in the form of Exhibit L;

e. Management Agreement. The Management Agreement for the Lease to the Marin Sanitary District in the form attached as Exhibit E, duly executed by GGB;

f. California Form 597-W. California Form 597-W duly executed by GGB, County and MCTD in the form of Exhibit M;

g. Property Materials. The Property Materials listed in the final form of Property Materials Acknowledgment in the form attached as Exhibit N; and

h. Other Documents. Any other documents, instruments, data, records, correspondence or agreements reasonably necessary for the Closing which have not previously been delivered.

6.4 Deliveries by SMART. Not later than one business day prior to the Closing Date, SMART shall deposit with Title Company the following items:

a. Closing Costs. Immediately available funds, in an amount sufficient to satisfy all closing costs including escrow fees, recording fees, and title insurance premium fees, as provided in a settlement statement to be prepared by Title Company and approved by SMART,

b. Deed. Executed acceptance of the Deed;

c. Assignment. The Assignment and Assumption Agreement described in Section 6.3(b) above, duly executed by SMART;

d. The Management Agreement described in Section 6.3(e) above duly executed by SMART;

e. Property Materials Acknowledgment. A duly executed original of the Property Materials Acknowledgment attached to this Agreement as Exhibit N; and

f. Other Documents. Any other documents, instruments, data, records, correspondence or agreements reasonably necessary for the Closing which have not been previously delivered.

6.5 Prorations. All revenue and expenses of the ROW including, without limitation, real property taxes, special taxes, assessments and utility fees and/or deposits, and rentals under the Lease(s), shall be prorated and apportioned between SMART and GGB, County and MCTD as of the Closing Date, so that GGB, County and MCTD bear all expenses with respect to the ROW and have the benefit of all income with respect to the ROW through and including the

Closing Date. GGB, County and MCTD and SMART hereby agree that any of the aforesaid prorations that cannot be calculated accurately as of the Closing Date shall be prorated on the basis of the parties' reasonable estimates.

**6.6 Special Taxes, Bonds or Assessments.** If, at the time of Closing, any portion of the ROW is affected by an assessment or other charge, whether for taxes or bonds, or interest thereon, which is or may become payable in installments, and an installment payment of such assessment is then a lien, then such installment shall be prorated as the Closing Date. All installments not then yet due whether or not the same have been prepaid shall not be prorated and SMART shall assume such bonds or assessments. Any prepaid assessments made in advance of their due dates shall be credited to GGB, County and MCTD, as appropriate. In addition, SMART shall assume any and all future bonds, assessments, special taxes, fees or charges applicable to the ROW for liabilities now or hereafter imposed by any governmental authority (collectively referred to as "Governmental Requirements") including, without limitation, any such Governmental Requirements imposed by any county or municipality with jurisdiction over a portion of the ROW, and those for (i) common area improvements, whether or not specifically set forth in this Agreement, (ii) local assessment or improvement districts, (iii) any special tax assessments, (iv) traffic mitigation improvements (v) park and recreation fees, and/or (vi) any other public facility infrastructure or traffic mitigation required or imposed by any county or municipality with jurisdiction over a portion of the ROW. SMART shall assume all such bonds or future assessments without offset or adjustment.

**6.7 Costs and Expenses.** SMART will pay all costs and expenses incurred in connection with the Closing, including without limitation, escrow fees, recording fees, documentary transfer tax fees (if any) and title insurance premium fees

**6.8 Delivery of Documents.** Title Company shall forthwith deliver to the party entitled thereto the recorded originals of such instruments or documents upon Title Company's receipt of the same.

## **ARTICLE VII**

### **POST CLOSING COMMITMENTS OF THE PARTIES**

SMART hereby acknowledges that GGB retains a valid public interest in assuring that the ROW is well utilized for public transportation purposes. SMART and GGB mutually acknowledge the need and desire to continue to work cooperatively on a sustained basis to advance the general public transportation mission of each agency and to administer their interdependent transportation planning and operational responsibilities with respect to the ROW. At the request of either party, SMART and GGB shall confer and cooperate on any particular matter related to the ROW that bears upon their respective transportation missions and SMART shall consider any request or proposal in good faith and with due deliberation.

## ARTICLE VIII

### MISCELLANEOUS

**8.1 Dispute Resolution.** Any controversy, claim or dispute arising out of or related to the interpretation, construction, performance or breach of this Agreement, which cannot be resolved by the parties after good faith discussions shall be submitted to mediation in the County of Marin, California, administered by the American Arbitration Association under its Commercial Mediation Rules. Mediation shall proceed and continue until such time as the matter is either resolved or the mediator finds or the parties agree that mediation should not continue. If the parties cannot resolve the controversy, claim or dispute through the mediation process described above, the matter shall be settled by arbitration in the County of Marin, California, administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. All direct costs and expenses of each party other than those for payment of the mediator or arbitrator(s) and/or mediation or arbitration facilities shall be borne and paid for by the party that incurs such expenses.

**8.2 Agreement Expenses.** The parties agree to bear their respective expenses, incurred or to be incurred in negotiating and preparing this Agreement and in closing and carrying out the transactions contemplated by this Agreement.

**8.3 Successors and Assigns** This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. The parties to this agreement may not assign, encumber or otherwise transfer its rights under this Agreement, whether voluntarily, involuntarily, by operation of law or otherwise. Any assignment, encumbrance or other transfer in violation of the foregoing shall be void and confer no rights on the transferee.

**8.4 Parties in Interest.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right to subrogation or action over against any party to this Agreement.

**8.5 Entire Agreement.** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior or contemporaneous oral or written agreements, representations, statements, documents, or understandings of the parties.

**8.6 Amendment.** No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by the party to be bound.

**8.7 Waiver.** No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver

constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

**8.8 Timeliness.** GGB, County, MCTD and SMART hereby acknowledge and agree that time is of the essence with respect to each and every term, condition, obligation and provision hereof

**8.9 Notices.** Any notice or other communication required or permitted to be given under this Agreement ("Notices") shall be in writing and shall be (i) personally delivered; (ii) delivered by a reputable overnight courier; or (iii) delivered by certified mail, return receipt requested and deposited in the U.S. Mail, postage prepaid. Notices shall be deemed received at the earlier of actual receipt or (i) one business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (ii) three business days following deposit in the U.S. Mail, as evidenced by a return receipt. Notices shall be directed to the parties at their respective addresses shown below, or such other address as any party may, from time to time, specify in writing to the other in the manner described above:

if to SMART:

Sonoma Marin Area Rail Transit District  
4040 Civic Center Drive, Suite 200  
San Rafael, CA 94903  
Attn: Lillian Hames.

with a copy to:

Gregory Dion, Esq.  
Sonoma County Counsel Office  
575 Administration Drive  
Santa Rosa, CA 95403

if to GGB:

Golden Gate Bridge Highway and  
Transportation District  
Box 9000 Presidio Station  
San Francisco, CA 94129-0601

with a copy to.

Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP  
425 Market Street, 26th Floor  
San Francisco, CA 94105  
Attn: David J. Miller, Esq.

if to County:

The County of Marin  
3501 Civic Center Drive, Room 304  
San Rafael, CA 94913  
Attn: Amy Van Doren  
Transit Planning Manager

with a copy to:

Patrick Faulkner, Esq.  
County Counsel of Marin  
Civic Center, Suite 342  
San Rafael, CA 94903

if to MCTD:

Marin County Transit District  
3501 Civic Center Drive  
San Rafael, CA 94903  
Attn: Amy Van Dorcn  
Transit Planning Manager

with a copy to:

Patrick Faulkner, Esq.  
County Counsel of Marin  
Civic Center, Suite 342  
San Rafael, CA 94903

**8.10 Governing Law and Venue.** This Agreement shall be construed in accordance with, and governed by, the laws of the State of California, and any action or proceeding, including mediation or arbitration, brought by any party in which this Agreement is subject, shall be brought in the County of Marin, California.

**8.11 Effect of Headings** The headings of the paragraphs of this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

**8.12 Invalidity.** Any provision of this Agreement which is invalid, void, or illegal, shall not affect, impair, or invalidate any other provision of this Agreement, and such other provisions of this Agreement shall remain in full force and effect.

**8.13 Counterparts.** This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**8.14 Number and Gender.** When required by the context of this Agreement, each number (singular and plural) shall include all numbers, and each gender shall include all genders.

**8.15 Further Assurances.** Each party to this Agreement agrees to execute, acknowledge, and deliver such further instruments as may be necessary or desirable to accomplish the intent and purpose of this Agreement, provided that the party requesting such further action shall bear all costs and expenses related thereto.

**8.16 Negotiated Terms.** The parties agree that the terms and conditions of this Agreement are the result of negotiations between the parties and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or its professionals participated in the preparation of this Agreement.

**8.17 Severability.** Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise render ineffective any other provision of this Agreement.

**8.18 Merger/Survival.** Except as otherwise expressly provided herein, the covenants, representations and warranties of Buyer and Seller herein shall merge into the Deed to be delivered by Seller to Buyer at Closing and shall not survive the Close of Escrow. The following provisions shall survive the Close of Escrow: Section 1.4, Article 11, Section 6.5, 6.6, Article 7 Sections 8.1, 8.3-6, 8.9-12, and 8.16-18.

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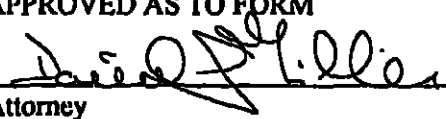
IN WITNESS WHEREOF, the parties have entered into this Agreement with the intent to be legally bound.

GOLDEN GATE BRIDGE, HIGHWAY AND  
TRANSPORTATION DISTRICT, a public agency

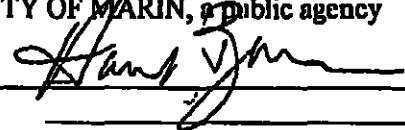
By:   
Name: Maureen Middlebrook  
Its: Board President

By:   
Name: Janel S. Tarantino  
Its: District Secretary

APPROVED AS TO FORM

  
Attorney

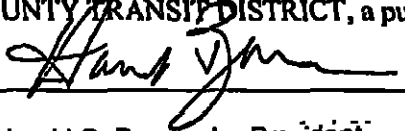
THE COUNTY OF MARIN, a public agency

By:   
Name: \_\_\_\_\_  
Its: \_\_\_\_\_ Harold C. Brown, Jr., President \_\_\_\_\_

APPROVED AS TO FORM

  
Attorney

MARIN COUNTY TRANSIT DISTRICT, a public agency

By:   
Name: \_\_\_\_\_  
Its: \_\_\_\_\_ Harold C. Brown, Jr., President \_\_\_\_\_

APPROVED AS TO FORM

  
Attorney

SONOMA MARIN AREA RAIL TRANSIT DISTRICT, a public agency

By:   
Name: Robert Jehn  
Its: Chairman of the Board

APPROVED AS TO FORM

Meghan T. Dien  
Attorney

THE UNDERSIGNED ESCROW HOLDER ACKNOWLEDGES ITS RECEIPT OF THE ORIGINAL DEPOSIT AND ONE EXECUTED COPY OF THIS AGREEMENT AND AGREES TO ACT IN ACCORDANCE THEREWITH.

ESCROW HOLDER.  
TITLE COMPANY

[ ]

By: \_\_\_\_\_  
\_\_\_\_\_, Escrow Office

**PARCEL ONE**

THAT CERTAIN PORTION OF THAT CERTAIN PARCEL OF LAND DESCRIBED AS "FIRST TRACT" IN THAT CERTAIN INSTRUMENT EXECUTED BY THOMAS B. VALENTINE TO THE SAN FRANCISCO AND SAN RAFAEL RAILROAD COMPANY, RECORDED JUNE 2, 1886 IN BOOK 3 OF DEEDS AT PAGE 399, MARIN COUNTY RECORDS, BOUNDED ON THE SOUTH BY THE FOLLOWING DESCRIBED LINE.

BEGINNING FOR REFERENCE AT THE NORTHWESTERLY TERMINUS OF THE COURSE DESCRIBED AS "S. 25° 02' 50" E., 124.00 FEET" IN PARCEL 1-SECOND OF THAT FINAL ORDER OF CONDEMNATION, RECORDED JULY 1, 1958 IN VOLUME 1199, PAGE 381 OFFICIAL RECORDS OF MARIN COUNTY; THENCE ALONG THE NORTHWESTERLY LINE OF TAMALPAIS DRIVE FROM A TANGENT THAT BEARS S. 25° 02' 50" E., ALONG A CURVE TO THE LEFT WITH A RADIUS OF 25.00 FEET, THROUGH AN ANGLE OF 90° 00' 00", AN ARC LENGTH OF 39.27 FEET AND N. 84° 57' 10" E., 238.55 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF THE NORTHWESTERN PACIFIC RAILROAD COMPANY, SAID POINT ALSO BEING THE TRUE POINT OF COMMENCEMENT OF THE LINE DESCRIBED HEREIN; THENCE N. 84° 19' 40" E., 149.98 FEET TO THE EASTERLY RIGHT OF WAY LINE OF THE SAID NORTHWESTERN PACIFIC RAILROAD COMPANY.

EXCEPTING THEREFROM THAT PORTION OF PARCEL ONE LYING NORTHERLY OF A LINE LOCATED 3,889.46 FEET MEASURED FROM THE SOUTHERLY BOUNDARY OF SAID PARCEL ONE NORTHERLY.

ALSO EXCEPTING THEREFROM:

THAT PORTION THEREOF LYING BELOW A DEPTH OF 500 FEET, MEASURED VERTICALLY, FROM THE CONTOUR OF THE SURFACE OF SAID PROPERTY; HOWEVER, GRANTOR, OR ITS SUCCESSORS AND ASSIGNS, SHALL NOT HAVE THE RIGHT FOR ANY PURPOSE WHATSOEVER TO ENTER UPON, INTO OR THROUGH THE SURFACE OF SAID PROPERTY OR ANY PART THEREOF LYING BETWEEN SAID SURFACE AND 500 FEET BELOW SAID SURFACE.

APN'S: 024-171-34, 024-032-06 AND 024-022-14

**PARCEL TWO**

THAT CERTAIN PORTION OF THAT CERTAIN PARCEL OF LAND DESCRIBED AS "FIRST TRACT" IN THAT CERTAIN INSTRUMENT EXECUTED BY THOMAS B. VALENTINE TO THE SAN FRANCISCO AND SAN RAFAEL RAILROAD COMPANY, RECORDED JUNE 2, 1886 IN BOOK 3 OF DEEDS AT PAGE 399, MARIN COUNTY RECORDS, BOUNDED ON THE SOUTH BY THE FOLLOWING DESCRIBED LINE

BEGINNING FOR REFERENCE AT THE NORTHWESTERLY TERMINUS OF THE COURSE DESCRIBED AS "S. 25° 02' 50" E., 124.00 FEET" IN PARCEL 1-SECOND OF THAT FINAL ORDER OF CONDEMNATION, RECORDED JULY 1, 1958 IN VOLUME 1199, PAGE 381 OFFICIAL RECORDS OF MARIN COUNTY; THENCE ALONG THE NORTHWESTERLY LINE OF TAMALPAIS DRIVE FROM A TANGENT THAT BEARS S. 25° 02' 50" E., ALONG A CURVE TO THE LEFT WITH A RADIUS OF 25.00 FEET, THROUGH AN ANGLE OF 90° 00' 00", AN ARC LENGTH OF 39.27 FEET AND N. 84° 57' 10" E., 238.55 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF THE NORTHWESTERN PACIFIC RAILROAD COMPANY, SAID POINT ALSO BEING THE TRUE POINT OF COMMENCEMENT OF THE LINE DESCRIBED HEREIN; THENCE N. 84° 19' 40" E., 149.98 FEET TO THE EASTERLY RIGHT OF WAY LINE OF THE SAID NORTHWESTERLY PACIFIC RAILROAD COMPANY.

EXCEPTING THEREFROM ANY PORTION OF THE ABOVE-DESCRIBED PROPERTY LYING WITHIN THE BED OF THE CORTI MADERA CANAL BELOW THE LINE OF NATURAL ORDINARY HIGH TIDE AND ALSO EXCEPTING ANY ARTIFICIAL ACCRETIONS TO SAID LAND WATERWARD OF SAID LINE OF NATURAL ORDINARY HIGH TIDE.

ALSO EXCEPTING THEREFROM THAT PORTION OF PARCEL TWO BEGINNING WITH THE SOUTHERLY BOUNDARY AND EXTENDING NORTHERLY 3,889.46 FEET THEREOF.

APN'S: 024-022-15, 023-040-13 AND 023-040-14

**PARCEL THREE:**

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF LARKSPUR, COUNTY OF MARIN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS

A RIGHT OF WAY OVER THAT CERTAIN STRIP OF LAND 100 FEET IN WIDTH AS DESCRIBED IN THAT CERTAIN GRANT OF RIGHT OF WAY TO THE SAN FRANCISCO AND NORTH PACIFIC RAILROAD COMPANY EXECUTED BY DAVID PORTER RECORDED SEPTEMBER 1, 1892 IN BOOK 21 OF DEEDS AT PAGE 196 MARIN COUNTY RECORDS

EXCEPTING THAT PORTION DEEDED TO THE STATE OF CALIFORNIA FOR FREEWAY PURPOSES BY DEED RECORDED MARCH 9, 1950 IN BOOK 846, PAGE 15, OFFICIAL RECORDS OF MARIN COUNTY

ALSO EXCEPTING THEREFROM ANY PORTION OF THE ABOVE DESCRIBED PROPERTY LYING WITHIN THE BED OF THE CORTE MADERA CANAL BELOW THE LINE OF NATURAL ORDINARY HIGH TIDE AND ALSO EXCEPTING ANY ARTIFICIAL ACCRETIONS TO SAID LAND WATERWARD OF SAID LINE OF NATURAL ORDINARY HIGH TIDE,

APN'S. 018-172-01 AND 02, 018-171-01, 02, 16, 17, 18 AND PORTION OF 19

**PARCEL THREE-A**

A TWENTY FIVE FOOT WIDE EASEMENT FOR INGRESS AND EGRESS PURPOSES, BEING A PORTION OF LOT 8, AS SAID LOT IS SHOWN ON THAT CERTAIN MAP OF LARKSPUR LANDING, FILED AUGUST 12, 1877 IN BOOK 17 OF MAPS AT PAGE 6, MARIN COUNTY RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT ANGLE POINT IN THE GENERAL SOUTHEASTERLY LINE OF SAID LOT, SAID ANGLE POINT LYING AT THE NORTHWESTERLY TERMINUS OF THE COURSE SHOWN ON SAID MAP AS NORTH 45° 22' 48" WEST, 10.00 FEET, THENCE LEAVING SAID GENERAL SOUTHEASTERLY LINE, NORTH 44° 23' 54" WEST, 158.85 FEET; THENCE NORTH 88° 16' 12" WEST, 75.01 FEET TO A POINT IN THE GENERAL NORTHWESTERLY LINE, BEING COMMON TO THE GENERAL SOUTHEASTERLY LINE OF THE NORTHWESTER PACIFIC RAILROAD, AS SAID RAILROAD IS SHOWN ON SAID MAP, THE FOLLOWING COURSES: THENCE SOUTH 27° 13' 48" WEST, 27.70 FEET, THENCE SOUTH 88° 16' 12" EAST, 69.66 FEET TO AN ANGLE POINT IN SAID COMMON GENERAL LINE; THENCE LEAVING SAID COMMON GENERAL LINE, CONTINUING SOUTH 88° 16' 12" EAST, 7.21 FEET; THENCE SOUTH 44° 23' 54" EAST, 149.57 FEET TO A POINT ON A CURVE ON THE GENERAL NORTHWESTERLY LINE OF LARKSPUR LANDING CIRCLE, AS SAID CIRCLE IS SHOWN ON SAID MAP, SAID GENERAL NORTHWESTERLY LINE BEING COMMON TO THE GENERAL SOUTHEASTERLY LINE OF SAID LOT 8; THENCE ALONG SAID COMMON GENERAL LINE IN A NORTHEASTERLY DIRECTION ALONG SAID CURVE (NON-TANGENT AT THIS POINT), HAVING A RADIUS OF 877.00 FEET, CONCAVE TO THE SOUTHEAST, WHOSE RADIUS POINT BEARS SOUTH 47° 00' 51" EAST THROUGH A CENTRAL ANGLE OF 1° 38' 03", AN ARC LENGTH OF 25.01 FEET TO THE POINT OF BEGINNING

**PARCEL FOUR:**

THAT CERTAIN PARCEL OF LAND AS DESCRIBED BY THAT CERTAIN DEED EXECUTED BY THE REMILLARD BRICK COMPANY TO THE SAN FRANCISCO AND NORTH PACIFIC RAILWAY COMPANY, RECORDED OCTOBER 23, 1897 IN BOOK 48 OF DEEDS AT PAGE 21, MARIN COUNTY RECORDS, AND DESCRIBED THEREIN AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY LINE OF THE RIGHT OF WAY IN THE SAN FRANCISCO AND NORTH PACIFIC RAILWAY COMPANY, SAID POINT BEING SOUTH 85° 38' EAST, FIFTY (50) FEET FROM A POINT ON THE CENTER LINE OF THE SAID SAN FRANCISCO AND NORTH PACIFIC RAILWAY COMPANY'S RAILROAD AT THE MOST SOUTHERLY SWITCH AT THE STATION ON SAID RAILROAD KNOWN AS GREENBRAE; RUNNING THENCE ON SAID EASTERLY LINE OF RIGHT OF WAY SOUTH 24° 21' WEST, SEVENTY-ONE (71) FEET; THENCE NORTH 41° 51' EAST, ONE HUNDRED AND THIRTY-EIGHT (138) FEET; THENCE NORTH 27° 36' EAST, THREE HUNDRED AND SEVENTY-SEVEN (377) FEET; THENCE SOUTH 88° 51' WEST, SIXTY-EIGHT (68) FEET TO SAID EASTERLY

LINE OF RIGHT OF WAY, THENCE ON SAID LINE SOUTH 24° 21' WEST, FOUR HUNDRED AND FOUR (404) FEET TO THE PLACE OF BEGINNING

EXCEPTING FROM THE PROPERTY HEREBY CONVEYED THAT PORTION THEREOF LYING BELOW A DEPTH OF 500 FEET, MEASURED VERTICALLY FROM THE CONTOUR OF THE SURFACE OF SAID PROPERTY; HOWEVER, RESERVOR OR ITS SUCCESSORS AND ASSIGNS, SHALL NOT HAVE THE RIGHT FOR ANY PURPOSE WHATSOEVER TO ENTER UPON, INTO OR THROUGH THE SURFACE OF SAID PROPERTY OR ANY PART THEREOF LYING BETWEEN SAID SURFACE AND 500 FEET BELOW SAID SURFACE

APN: PORTION OF 018-171-18

PARCEL FIVE

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF SAN RAFAEL, COUNTY OF MARIN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

A RIGHT OF WAY OVER THOSE PORTIONS OF THE STRIP OF LAND 80 FEET WIDE AND THE STRIP OF LAND 100 FEET WIDE DESCRIBED IN THAT CERTAIN INSTRUMENT EXECUTED BY WILLIAM T. COLEMAN TO THE SAN FRANCISCO AND NORTH PACIFIC RAILROAD COMPANY RECORDED SEPTEMBER 7, 1892 IN BOOK 24 OF DEEDS AT PAGE 22, MARIN COUNTY RECORDS, LYING SOUTHEASTERLY OF A LINE FORMED BY THE SOUTHWESTERLY EXTENSION OF THE SOUTHEASTERLY LINE OF AUBURN STREET, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "PARCEL MAP AT WESTERLY CORNER OF JACOBY STREET AND SIMMS STREET", FILED FOR RECORD MARCH 12, 1973 IN VOLUME 8 OF PARCEL MAPS AT PAGE 10, MARIN COUNTY RECORDS, SAID LINE HAVING A BEARING OF SOUTH 50° 38' 54" WEST

APN'S: 018-180-12, PORTION OF 018-180-08; PORTION OF 018-141-04, AND 05; PORTION OF 08-013-10 AND ALL OF 018-013-09

PARCEL SIX:

ALL THAT CERTAIN PARCEL OF LAND DESCRIBED IN THAT CERTAIN INSTRUMENT EXECUTED BY GEORGE P. MCNEAR, ET UX TO THE NORTHWESTERN PACIFIC RAILROAD COMPANY RECORDED SEPTEMBER 30, 1909 IN BOOK 124 OF DEEDS AT PAGE 222, MARIN COUNTY RECORDS

EXCEPTING THEREFROM THAT PORTION THEREOF LYING BELOW A DEPTH OF 500 FEET, MEASURED VERTICALLY, FROM THE CONTOUR OF THE SURFACE OF SAID PROPERTY, HOWEVER, RESERVOR, OR ITS SUCCESSOR AND ASSIGNS, SHALL NOT HAVE THE RIGHT FOR ANY PURPOSES WHATSOEVER TO ENTER UPON, INTO OR THROUGH THE SURFACE OF SAID PROPERTY OR ANY PART THEREOF LYING BETWEEN SAID SURFACE AND 500 FEET BELOW SAID SURFACE

APN: PORTION OF 018-141-05

PARCEL SEVEN

ALL THAT CERTAIN PARCEL OF LAND DESCRIBED AS PARCEL ONE IN THAT CERTAIN INSTRUMENT EXECUTED BY GEORGE P. MCNEAR, ET UX, TO THE NORTHWESTERN PACIFIC RAILROAD COMPANY RECORDED JUNE 3, 1924 IN BOOK 49 OF OFFICIAL RECORDS AT PAGE 121, MARIN COUNTY RECORDS.

EXCEPTING THEREFROM THAT PORTION THEREOF LYING BELOW A DEPTH OF 500 FEET, MEASURED VERTICALLY, FROM THE CONTOUR OF THE SURFACE OF SAID PROPERTY; HOWEVER, RESERVOR, OR ITS SUCCESSOR AND ASSIGNS, SHALL NOT HAVE THE RIGHT FOR ANY PURPOSES WHATSOEVER TO ENTER UPON, INTO OR THROUGH THE SURFACE OF SAID PROPERTY OR ANY PART THEREOF LYING BETWEEN SAID SURFACE AND 500 FEET BELOW SAID SURFACE

APN: PORTION OF 018-141-05

**PARCEL EIGHT**

ALL THAT CERTAIN PARCEL OF LAND DESCRIBED AS PARCEL TWO IN THAT CERTAIN INSTRUMENT EXECUTED BY GEORGE P. MCNEAR, ET UX, TO THE NORTHWESTERN PACIFIC RAILROAD COMPANY RECORDED JUNE 3, 1924 IN BOOK 49 OF OFFICIAL RECORDS AT PAGE 121, MARIN COUNTY RECORDS.

EXCEPTING THEREFROM THAT PORTION THEREOF LYING BELOW A DEPTH OF 500 FEET, MEASURED VERTICALLY, FROM THE CONTOUR OF THE SURFACE OF SAID PROPERTY; HOWEVER, RESERVOR, OR ITS SUCCESSOR AND ASSIGNS, SHALL NOT HAVE THE RIGHT FOR ANY PURPOSES WHATSOEVER TO ENTER UPON, INTO OR THROUGH THE SURFACE OF SAID PROPERTY OR ANY PART THEREOF LYING BETWEEN SAID SURFACE AND 500 FEET BELOW SAID SURFACE

APN PORTION OF 018-141-04

**PARCEL NINE**

ALL THAT CERTAIN PARCEL OF LAND VACATED BY RESOLUTION OF THE COUNTY OF MARIN, A CERTIFIED COPY OF WHICH WAS RECORDED JULY 10, 1924 IN BOOK 49 OF OFFICIAL RECORDS AT PAGE 394, MARIN COUNTY RECORDS.

APN PORTION OF 018-141-05

**PARCEL TEN**

A RIGHT OF WAY OVER ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF SAN RAFAEL, COUNTY OF MARIN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

THAT PORTION OF THAT CERTAIN PARCEL OF LAND DESCRIBED SECONDLY IN INSTRUMENT DATED AUGUST 21, 1882 FROM WILLIAM T. COLEMAN TO THE SAN FRANCISCO AND NORTH PACIFIC RAILROAD COMPANY, RECORDED SEPTEMBER 7, 1892 IN BOOK 24 OF DEEDS AT PAGE 22, MARIN COUNTY RECORDS, LYING NORTHWESTERLY OF THE NORTHWESTERLY LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN "PARCEL ONE" OF THE DEED DATED JANUARY 31, 1883 FROM THE NORTHWESTERN PACIFIC RAILROAD COMPANY TO THE COUNTY OF MARIN, ET AL, RECORDED FEBRUARY 2, 1883 AS INSTRUMENT NO 83005870, MARIN COUNTY RECORDS.

EXCEPTING THEREFROM ANY PORTION LYING WITHIN THAT CERTAIN 80 FOOT WIDE STRIP OF LAND DESCRIBED IN THAT CERTAIN INSTRUMENT RECORDED JUNE 21, 1899 IN BOOK 1 OF DEEDS AT PAGE 1, MARIN COUNTY RECORDS.

APN PORTION OF 018-013-10

**PARCEL ELEVEN:**

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF SAN RAFAEL, COUNTY OF MARIN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

ALL THOSE CERTAIN PARCELS OF LAND DESCRIBED IN FINAL ORDER OF CONDEMNATION NO. 3608 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF MARIN DATED NOVEMBER 30, 1910, ENTITLED, "NORTHWESTERN PACIFIC RAILROAD COMPANY, PLAINTIFF VS. ALPHONSO MILLER, DEFENDANT", RECORDED DECEMBER 1, 1910 IN BOOK 132 OF DEEDS AT PAGE 128, MARIN COUNTY RECORDS.

APN: PORTION OF 018-013-10

**PARCEL TWELVE**

**ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF SAN RAFAEL, COUNTY OF MARIN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS**

**THAT PORTION OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN DEED DATED MAY 28, 1894 FROM FRITZ SCHUEMANN, ET UX TO SAN FRANCISCO AND NORTH PACIFIC RAILROAD COMPANY, RECORDED JUNE 9, 1894 IN BOOK 30 OF DEEDS AT PAGE 137, MARIN COUNTY RECORDS, LYING SOUTHWESTERLY OF THE SOUTHWESTERLY LINE OF THE LAND DESCRIBED IN THE DEED DATED JUNE 28, 1891 FROM THE NORTHWESTERN PACIFIC RAILROAD COMPANY TO ZYGMUNT J. TOMCZAK, ET UX, RECORDED SEPTEMBER 20, 1951 IN BOOK 709 OF OFFICIAL RECORDS AT PAGE 15, MARIN COUNTY RECORDS.**

**APN. PORTION OF 018-013-10**

**PARCEL THIRTEEN.**

**ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF SAN RAFAEL, COUNTY OF MARIN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:**

**THAT PORTION OF THAT CERTAIN PARCEL OF LAND DESCRIBED AS "PARCEL NO. 1" OF THAT CERTAIN DEED DATED JULY 13, 1933 FROM FRANK MULKS, ET AL TO THE NORTHWESTERN PACIFIC RAILROAD COMPANY, RECORDED AUGUST 10, 1933 IN BOOK 267 OF OFFICIAL RECORDS AT PAGE 202, MARIN COUNTY RECORDS, WHICH WAS EXCEPTED FROM THE LAND DESCRIBED IN "PARCEL THREE" OF DEED DATED DECEMBER 4, 1978 FROM THE NORTHWESTERN PACIFIC RAILROAD COMPANY TO THE CITY OF SAN RAFAEL, RECORDED JANUARY 12, 1979 IN BOOK 3488 OF OFFICIAL RECORDS AT PAGE 440, MARIN COUNTY RECORDS; EXCEPTING THAT PORTION WITHIN THE LINES OF THAT CERTAIN 55 FOOT STRIP OF LAND FIRST DESCRIBED IN THE DEED FROM WILLIAM T. COLEMAN, RECORDED SEPTEMBER 7, 1892 IN BOOK 24 OF DEEDS, PAGE 22, MARIN COUNTY RECORDS**

**APN. PORTION OF 018-013-09**

**PARCEL FOURTEEN**

**A RIGHT OF WAY OVER ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF SAN RAFAEL, COUNTY OF MARIN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:**

**ALL OF THAT CERTAIN PARCEL OF LAND DESCRIBED FIRSTLY IN THE THAT CERTAIN INSTRUMENT DATED AUGUST 21, 1882 EXECUTED BY WILLIAM T. COLEMAN, RECORDED SEPTEMBER 7, 1892 IN BOOK 24 OF DEEDS AT PAGE 22, MARIN COUNTY RECORDS**

**EXCEPTING THEREFROM THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED DATED DECEMBER 4, 1978 FROM THE NORTHWESTERN PACIFIC RAILROAD COMPANY TO THE CITY OF SAN RAFAEL, RECORDED JANUARY 12, 1979 IN BOOK 3488 OF OFFICIAL RECORDS AT PAGE 431, MARIN COUNTY RECORDS**

**ALSO EXCEPTING THEREFROM ANY PORTION OF THE ABOVE DESCRIBED PROPERTY LYING WITHIN THE BED AND/OR WATERS OF THE SAN RAFAEL CANAL AND/OR CREEK AS THE SAME PRESENTLY EXISTS AND/OR FORMERLY EXISTED**

**APN'S: PORTION OF 018-013-09 AND -10, ALL OF 018-011-71, -73, -77 AND -78; ALL OF APN 013-051-024; ALL OF 013-041-50; PORTION OF 013-021-31 AND -34; PORTION OF 011-278-02**

PARCEL FIFTEEN

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF SAN RAFAEL, COUNTY OF MARIN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS.

THAT CERTAIN PARCEL OF LAND DESCRIBED SECONDLY IN THE DEED DATED DECEMBER 21, 1905 FROM JAMES L. FLOOD TO THE SAN FRANCISCO AND NORTH PACIFIC RAILWAY COMPANY, RECORDED DECEMBER 28, 1905 IN BOOK 97 OF DEEDS AT PAGE 98, MARIN COUNTY RECORDS.

EXCEPT ALL THAT PORTION OF SAID LAND LYING WESTERLY AND SOUTHWESTERLY OF THAT CERTAIN NORTHEASTERLY LINE, WITH THE BEARING OF NORTH 41° 57' WEST, 441.08 FEET, SET OUT IN DEED TO RICE SUPPLY, INC., A CORPORATION RECORDED JULY 1, 1952 IN BOOK 750 AT PAGE 378, MARIN COUNTY RECORDS.

ALSO EXCEPT THAT PORTION WITHIN THE LINES OF THAT CERTAIN 55 FOOT STRIP OF LAND FIRST DESCRIBED IN THE DEED FROM WILLIAM T. COLEMAN, RECORDED SEPTEMBER 7, 1892 IN BOOK 24 OF DEEDS AT PAGE 22 MARIN COUNTY RECORDS

APN: PORTION OF 013-021-31

PARCEL SIXTEEN:

A RIGHT OF WAY OVER THE FOLLOWING LAND BEGINNING AT A POINT IN THE SOUTHWESTERLY LINE OF FRANCISCO BOULEVARD THAT IS THE NORTHWESTERLY CORNER OF LAND DESCRIBED AS PARCEL 3 IN DEED DATED JULY 22, 1968, FROM NORTHWESTERN PACIFIC RAILROAD COMPANY TO STATE OF CALIFORNIA; THENCE NORTH 51° 52' 21" WEST ALONG SAID SOUTHWESTERLY LINE 130 FEET; THENCE SOUTH 32° 14' 18" EAST 124.884 FEET; THENCE SOUTH 34° 17' 47" EAST 353.91 FEET TO A POINT IN THE WESTERLY LINE OF IRWIN STREET; THENCE NORTH 8° 03' 54" EAST ALONG LAST SAID LINE 50 FEET TO A POINT IN THE WESTERLY LINE OF SAID PARCEL 3, THENCE ALONG LAST SAID WESTERLY LINE NORTH 40° 23' 08" WEST 128.02 FEET TO A POINT AND NORTHERLY ON A CURVE TO THE RIGHT HAVING A RADIUS OF 1762 FEET, THROUGH A CENTRAL ANGLE OF 8° 18' 47" (TANGENT TO SAID CURVE AT LAST MENTIONED POINT BEARS NORTH 30° 31' 13" WEST) AN ARC DISTANCE OF 194.14 FEET TO THE POINT OF BEGINNING.

EXCEPT THAT PORTION WITHIN THE LINES OF THAT CERTAIN 55 FOOT STRIP OF LAND FIRST DESCRIBED IN THE DEED FROM WILLIAM T. COLEMAN, RECORDED SEPTEMBER 7, 1892 IN BOOK 24 OF DEEDS AT PAGE 22 MARIN COUNTY RECORDS.

APN: PORTION OF 013-021-34

PARCEL SEVENTEEN.

THE PARCEL OF LAND FIRSTLY DESCRIBED IN THE DEED FROM JAMES L. FLOOD, ET UX, TO NORTH PACIFIC RAILWAY COMPANY, A CORPORATION, DATED DECEMBER 21, 1905, RECORDED DECEMBER 28, 1905 IN BOOK 97 OF DEEDS, PAGE 98, MARIN COUNTY RECORDS, AS FOLLOWS

BEGINNING AT THE INTERSECTION OF THE EASTERLY LINE OF TAMALPAIS AVENUE WITH THE SOUTHERLY LINE OF SECOND STREET, RUNNING THENCE ON SAID SOUTHERLY LINE OF SECOND STREET SOUTH EIGHTY-THREE (83) DEGREES, FIFTEEN (15) MINUTES EAST, TWO HUNDRED AND TEN (210) FEET, THENCE SOUTH ELEVEN (11) DEGREES FIFTEEN (15) MINUTES WEST ONE HUNDRED AND SEVENTY-SEVEN (177) FEET MORE OR LESS TO THE NORTHERLY LINE OF THE TOLL ROAD, THENCE ON SAID NORTHERLY LINE OF TOLL ROAD NORTH FIFTY ONE (51) DEGREES FORTY-FIVE (45) MINUTES WEST TWO HUNDRED AND THIRTY-THREE (233) FEET MORE OR LESS TO THE EASTERLY LINE OF TAMALPAIS AVENUE, THENCE ON SAID EASTERLY LINE OF TAMALPAIS AVENUE NORTH ELEVEN (11) DEGREES FIFTEEN (15) MINUTES EAST SIXTY-THREE (63) FEET, MORE OR LESS, TO THE PLACE OF BEGINNING



EXCEPTING THEREFROM THE RIGHT OF WAY CONVEYED BY WM. T. COLEMAN TO THE SAN FRANCISCO AND NORTH PACIFIC RAILROAD COMPANY BY DEED DATED AUGUST 21ST 1882, AND RECORDED IN BOOK 24 OF DEEDS AT PAGE 22, MARIN COUNTY RECORDS

EXCEPTING THEREFROM THE FOLLOWING:

A. THAT PORTION THEREOF DESCRIBED IN THE DEED FROM NORTHWESTERN PACIFIC RAILROAD COMPANY, A CORPORATION, TO HENRY HESS CO., A CORPORATION, DATED FEBRUARY 1, 1935, RECORDED FEBRUARY 14, 1935 IN BOOK 293 OFFICIAL RECORDS OF MARIN COUNTY, PAGE 52.

B. THAT PORTION THEREOF DESCRIBED IN THE DEED FROM NORTHWESTERN PACIFIC RAILROAD COMPANY, A CORPORATION, TO MARIN COUNTY ABSTRACT COMPANY, A CORPORATION, DATED JUNE 9, 1941, RECORDED AUGUST 18, 1941 IN BOOK 419 OFFICIAL RECORDS OF MARIN COUNTY, PAGE 54

C. THAT PORTION THEREOF DESCRIBED AS PARCEL THREE IN THE DEED FROM NORTHWESTERN PACIFIC RAILROAD COMPANY, A CALIFORNIA CORPORATION, TO CITY OF SAN RAFAEL, A MUNICIPAL CORPORATION DATED DECEMBER 4, 1978, RECORDED JANUARY 12, 1979 IN BOOK 3488 OF OFFICIAL RECORDS OF MARIN COUNTY, PAGE 438

ALSO EXCEPTING ANY PORTION OF THE ABOVE DESCRIBED PROPERTY LYING WITHIN THE BED AND/OR WATERS OF THE SAN RAFAEL CANAL AND/OR CREEK AS THE SAME PRESENTLY EXISTS AND/OR FORMERLY EXISTED.

APN: A PORTION OF 011-278-02

PARCEL EIGHTEEN:

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF SAN RAFAEL, COUNTY OF MARIN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

THAT PORTION OF THAT CERTAIN PARCEL OF LAND DESCRIBED AS PARCEL 2 OF THAT DEED DATED FEBRUARY 15, 1888 FROM JAMES M. DONAHUE, TO SAN FRANCISCO AND NORTH PACIFIC RAILROAD COMPANY, RECORDED DECEMBER 17, 1888 IN BOOK 8 OF DEEDS AT PAGE 470, MARIN COUNTY RECORDS, LYING SOUTHWESTERLY OF THE WESTERLY LINE OF LAND DESCRIBED IN DEED DATED JUNE 11, 1985 TO THE SAN RAFAEL REDEVELOPMENT AGENCY, RECORDED JUNE 20, 1985 AS INSTRUMENT NO. 85-025774, MARIN COUNTY RECORDS

APN: PORTION OF 011-278-02

PARCEL NINETEEN:

ALL THAT CERTAIN REAL PROPERTY, SITUATE IN THE CITY OF SAN RAFAEL, COUNTY OF MARIN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

ALL THAT CERTAIN PARCEL OF LAND DESCRIBED AS PARCEL 1 IN THE DEED DATED FEBRUARY 18, 1931 FROM MAUD LEE FLOOD, ET AL TO THE NORTHWESTERN PACIFIC RAILROAD COMPANY, RECORDED MARCH 12, 1931 IN BOOK 210 OF OFFICIAL RECORDS AT PAGE 255, MARIN COUNTY RECORDS

EXCEPTING THEREFROM ANY PORTION OF THE ABOVE DESCRIBED PROPERTY LYING WITHIN THE BED AND/OR WATERS OF THE SAN RAFAEL CANAL AND/OR CREEK AS THE SAME PRESENTLY EXISTS AND/OR FORMERLY EXISTED.

APN: PORTION OF 011-278-02

**PARCEL TWENTY:**

A RIGHT OF WAY OVER ALL THAT PORTION OF TAMALPAIS AVENUE IN THE CITY OF SAN RAFAEL, LYING BETWEEN THE NORTHEASTERLY LINE OF TOLL ROAD (SOMETIMES REFERRED TO AS STATE HIGHWAY) AND THE SOUTHERLY LINE OF THIRD STREET AND ALL THAT PORTION OF SECOND STREET IN THE CITY OF SAN RAFAEL, LYING BETWEEN A LINE THAT BEARS NORTH 11° 15' EAST THROUGH A POINT DISTANT SOUTH 83° 15' EAST 210 FEET MEASURED ALONG THE SOUTHERLY LINE OF SECOND STREET FROM ITS INTERSECTION WITH THE EASTERLY LINE OF TAMALPAIS AVENUE AND A LINE RUNNING SOUTHERLY AND PARALLEL WITH TAMALPAIS AVENUE THROUGH A POINT DISTANT NORTH 83° 15' WEST 100 FEET MEASURED ALONG THE NORTHERLY LINE OF SECOND STREET FROM ITS INTERSECTION WITH THE WESTERLY LINE OF TAMALPAIS AVENUE TO THE NORTHEASTERLY LINE OF TOLL ROAD (SOMETIMES REFERRED TO AS STATE HIGHWAY) AND THENCE SOUTHEASTERLY ALONG THE NORTHEASTERLY LINE OF SAID TOLL ROAD TO THE SOUTHERLY LINE OF SECOND STREET AS ABANDONED BY RESOLUTION NO. 826, A CERTIFIED COPY OF WHICH WAS RECORDED JULY 16, 1934 IN BOOK 276 AT PAGE 460 MARIN COUNTY RECORDS

EXCEPT FROM SAID PORTION OF SECOND STREET, ABANDONED, ALL THAT PORTION LYING WEST OF THE WESTERLY LINE OF TAMALPAIS AVENUE ABANDONED BY SAID RESOLUTION.

ALSO EXCEPT FROM SAID PORTION OF SECOND STREET THAT PORTION CONVEYED TO SAN RAFAEL REDEVELOPMENT AGENCY IN DEED RECORDED JUNE 20, 1985 AS INSTRUMENT NO. 85-025774

ALSO EXCEPT ANY PORTION OF THE ABOVE DESCRIBED PROPERTY LYING WITHIN THE BED AND/OR WATERS OF THE SAN RAFAEL CANAL AND/OR CREEK AS THE SAME PRESENTLY EXISTS AND/OR FORMERLY EXISTED

APN: PORTION OF 011-279-02

**PARCEL TWENTY-ONE:**

ALL THAT PORTION OF TAMALPAIS AVENUE AS SHOWN UPON THE MAP OF THE TOWNSITE OF THE TOWN OF SAN RAFAEL, MADE BY H. AUSTIN ESQ., FILED OCTOBER 14, 1873 RACK 1 SHEET 4 MARIN COUNTY RECORDS BOUNDED ON THE NORTH BY THE SOUTHERLY LINE OF FOURTH STREET AND BOUNDED ON THE SOUTH BY THE NORTHERLY LINE OF THIRD STREET

APN: 011-277-02

**PARCEL TWENTY-TWO**

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF SAN RAFAEL, COUNTY OF MARIN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS.

ALL THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED DATED SEPTEMBER 10, 1920 FROM GEORGE M. DODGE TO THE NORTHWESTERN PACIFIC RAILROAD COMPANY, RECORDED OCTOBER 7, 1920 IN BOOK 219 OF DEEDS AT PAGE 270, MARIN COUNTY RECORDS

APN: PORTION OF 011-186-19

**PARCEL TWENTY-THREE.**

A RIGHT OF WAY OVER ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF SAN RAFAEL, COUNTY OF MARIN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS.

ALL THAT CERTAIN PARCEL OF LAND DESCRIBED IN THAT CERTAIN INSTRUMENT DATED JUNE 12, 1875 FROM WILLIAM T. COLEMAN TO THE SONOMA AND MARIN RAILROAD COMPANY, RECORDED MAY 22, 1877 IN BOOK P OF DEEDS AT PAGE 404, MARIN COUNTY RECORDS

ALSO EXCEPTING THEREFROM THAT PORTION OF THE ABOVE DESCRIBED PROPERTY CONVEYED TO THE CALIFORNIA PACIFIC INSURANCE SERVICES, INC., A CALIFORNIA CORPORATION IN THAT CERTAIN DEED RECORDED OCTOBER 21, 1976 IN BOOK 3102 OF OFFICIAL RECORDS AT PAGE 883, MARIN COUNTY RECORDS.

APN'S: PORTION OF 011-188-19, ALL OF 011-185-18 AND -05, ALL OF 011-145-10; ALL OF 011-103-18, ALL OF 011-094-12; ALL OF 011-075-12 & -05; ALL OF 011-065-10, ALL OF 011-042-01

**PARCEL TWENTY-FOUR**

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF SAN RAFAEL, COUNTY OF MARIN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

ALL OF THAT CERTAIN PARCEL OF LAND DESCRIBED AS PARCEL "1" OF THAT CERTAIN DEED DATED OCTOBER 28, 1907 FROM MARY A. BOSMAN, ET AL TO THE NORTHWESTERN PACIFIC RAILROAD COMPANY, RECORDED FEBRUARY 5, 1908, IN BOOK 104 OF DEEDS AT PAGE 151, MARIN COUNTY RECORDS.

APN'S: 179-232-02, 179-222-22, -21, -27 AND -28; 179-131-02, 179-092-01; 179-051-18, 179-031-043, PORTION OF 179-041-25

**PARCEL TWENTY-FIVE**

THAT PORTION OF COUNTY ROAD #5-19 8 ABANDONED AND VACATED BY RESOLUTION OF THE COUNTY OF MARIN, #5-39, ON NOVEMBER 10, 1931 LYING ADJACENT TO AND NORTHEAST OF THAT CERTAIN 100 FOOT STRIP OF LAND CONVEYED BY MARY A. BOSMAN, ET AL IN DEED RECORDED FEBRUARY 5, 1908 IN BOOK 104 OF DEEDS AT PAGE 151, MARIN COUNTY RECORDS SAID PORTION LIES SOLELY WITHIN THE EXTENSION OF THE NORTHERLY AND SOUTHERLY LINES OF SAID 100 FOOT STRIP.

APN: PORTION OF 179-041-25

**PARCEL TWENTY-SIX**

A 100 FOOT WIDE RIGHT OF WAY OVER A STRIP OF LAND CONVEYED BY VINCENT WAGONER, TO SONOMA AND MARIN RAILROAD COMPANY, IN DEED RECORDED NOVEMBER 10, 1875 IN BOOK 6 OF DEEDS AT PAGE 76, MARIN COUNTY RECORDS, SAID 100 FOOT WIDE STRIP LYING ADJACENT TO AND NORTH OF COUNTY ROAD 5-19 8, NOW VACATED, AND SOUTH OF AND ADJACENT TO THE SOUTHERLY TERMINUS OF THE LANDS CONVEYED BY UNION TRUST COMPANY OF SAN FRANCISCO, TRUSTEE TO NORTHWESTERN PACIFIC RAILROAD COMPANY IN DEED RECORDED OCTOBER 23, 1916 IN BOOK 183 OF DEEDS AT PAGE 104, AND LYING WITHIN THE SOUTHERLY EXTENSION OF THE WESTERLY AND EASTERLY LINES OF SAID DEED IN BOOK 183 OF DEEDS AT PAGE 104.

APN'S: 179-041-02 AND PORTION OF 180-410-14

**PARCEL TWENTY-SEVEN:**

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF SAN RAFAEL, COUNTY OF MARIN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

ALL THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED DATED OCTOBER 4, 1916 FROM THE UNION TRUST COMPANY OF SAN FRANCISCO, TRUSTEE, ET AL TO THE NORTHWESTERN PACIFIC RAILROAD COMPANY, RECORDED OCTOBER 23, 1916 IN BOOK 183 OF DEEDS AT PAGE 104, MARIN COUNTY RECORDS

EXCEPTING THEREFROM ANY PORTION OF THE ABOVE DESCRIBED PROPERTY LYING WITHIN THE BED AND/OR WATERS OF THE GALLINAS CANAL AND/OR CREEK AS THE SAME PRESENTLY EXISTS AND/OR FORMERLY EXISTED.

APN'S PORTION OF 180-410-14, PORTION OF 180-124-07; PORTION OF 155-110-12

PARCEL TWENTY-EIGHT

A RIGHT OF WAY OVER THAT CERTAIN IRREGULARLY SHAPED PARCEL OF LAND ADJOINING THE LINES OF THE TIDE LAND SURVEY AND ADJACENT TO LOTS 14, 18 AND 20 IN SECTION 21, TOWNSHIP 2 NORTH, RANGE 8 WEST, M.D.B. & M THAT LIES WITHIN THAT CERTAIN 100 FOOT WIDE RIGHT OF WAY GRANTED BY VINCENT WAGONER TO SONOMA AND MARIN RAILROAD COMPANY IN DEED RECORDED NOVEMBER 10, 1875 IN BOOK P OF DEEDS AT PAGE 78, MARIN COUNTY RECORDS

APN'S PORTION OF 180-410-14 AND PORTION OF 180-124-07

PARCEL TWENTY-NINE:

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF SAN RAFAEL, COUNTY OF MARIN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS.

ALL OF THOSE CERTAIN PARCELS OF LAND DESCRIBED AS PARCELS 1 AND 2 IN THE DEED DATED OCTOBER 28, 1937 FROM SAN SMITH, ET AL TO THE NORTHWESTERN PACIFIC RAILROAD COMPANY, RECORDED NOVEMBER 23, 1937 IN BOOK 352 OF OFFICIAL RECORDS AT PAGE 354, MARIN COUNTY RECORDS.

APN'S PORTION OF 180-124-07, PORTION OF 155-110-12

PARCEL THIRTY.

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF SAN RAFAEL, COUNTY OF MARIN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS

A RIGHT OF WAY OVER ALL OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED DATED DECEMBER 21, 1881 FROM JOHN LUCAS TO THE SAN FRANCISCO AND NORTH PACIFIC RAILROAD COMPANY, RECORDED DECEMBER 28, 1881 IN BOOK W OF DEEDS AT PAGE 410, MARIN COUNTY RECORDS.

EXCEPTING THEREFROM ANY PORTION OF THE ABOVE DESCRIBED PROPERTY LYING WITHIN THE BED AND/OR WATERS OF THE GALLINAS CANAL AND/OR CREEK AS THE SAME PRESENTLY EXISTS AND/OR FORMERLY EXISTED

APN. PORTION OF 155-120-12

PARCEL THIRTY-ONE:

A RIGHT OF WAY OVER THE PARCEL OF LAND DESCRIBED IN THE GRANT OF RIGHT OF WAY FROM JAMES MILLER TO THE SONOMA AND MARIN RAILROAD COMPANY, A CORPORATION, RECORDED IN BOOK T OF DEEDS, PAGE 414, MARIN COUNTY RECORDS, AS FOLLOWS:

A STRIP OF LAND ACROSS THE LANDS OF THE PARTY OF THE FIRST PART FOR THE ROAD OF SAID CORPORATION NOT TO EXCEED EIGHTY FEET IN WIDTH.. TO BE DETERMINED AND LOCATED ACCORDING TO AND ALONG THE LINE TO BE ESTABLISHED BY THE ENGINEERS OF SAID CORPORATION UPON THE FINAL SURVEY AND LOCATION OF SAID ROAD "

EXCEPT THAT PORTION QUITCLAIMED IN DEED RECORDED JANUARY 9, 1986 AS IN INSTRUMENT NO 88-001828

APN'S. PORTION OF 155-120-12 AND PORTION OF 155-010-22

**PARCEL THIRTY-TWO:**

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF SAN RAFAEL, COUNTY OF MARIN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS

ALL OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED DATED SEPTEMBER 30, 1937 FROM SAM SMITH, ET AL TO THE NORTHWESTERN PACIFIC RAILROAD COMPANY, RECORDED MARCH 22, 1938 IN BOOK 357 OF OFFICIAL RECORDS AT PAGE 374, MARIN COUNTY RECORDS.

APN: PORTION OF 155-120-12

**PARCEL THIRTY-THREE.**

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE COUNTY OF MARIN, STATE CALIFORNIA, DESCRIBED AS FOLLOWS

ALL OF THOSE CERTAIN PARCELS OF LAND DESCRIBED IN THE DEED DATED JULY 2, 1919 FROM GEORGE W. AND KATE C. TOWLE TO THE NORTHWESTERN PACIFIC RAILROAD COMPANY, RECORDED JULY 11, 1919 IN BOOK 205 OF DEEDS AT PAGE 209, MARIN COUNTY RECORDS.

APN'S: PORTION OF 155-120-12 AND PORTION OF 155-010-22

**PARCEL THIRTY-FOUR**

ALL THAT CERTAIN REAL PROPERTY SITUATE PARTLY IN THE CITY OF NOVATO, COUNTY OF MARIN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS.

ALL THAT CERTAIN PARCEL OF LAND DESCRIBED AS "FIRST" IN THE DEED DATED APRIL 1, 1908 FROM THE ROMAN CATHOLIC ARCH BISHOP OF SAN FRANCISCO TO THE NORTHWESTERN PACIFIC RAILROAD COMPANY, RECORDED MAY 15, 1908 IN BOOK 114 OF DEEDS AT PAGE 372, MARIN COUNTY RECORDS.

APN'S: PORTION OF 155-010-22 AND PORTION OF 155-010-08

**PARCEL THIRTY-FIVE**

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF NOVATO, COUNTY OF MARIN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

ALL THAT CERTAIN REAL PROPERTY OF LAND DESCRIBED IN THE DECREE OF CONDEMNATION OF THE DISTRICT COURT OF THE 22ND JUDICIAL DISTRICT OF CALIFORNIA IN AND FOR THE COUNTY OF MARIN, DATED AUGUST 4, 1879, IN THE CASE OF SAN FRANCISCO AND NORTH PACIFIC RAILROAD COMPANY VS. BENJAMIN PACHECO, ET AL, RECORDED JANUARY 11, 1882 IN BOOK W OF DEEDS AT PAGE 447, MARIN COUNTY RECORDS.

EXCEPTING THEREFROM THE LAND DESCRIBED AS TRACT I, TRACT II AND TRACT III IN THE FINAL ORDER OF CONDEMNATION IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF MARIN, CASE NO. 3446, NORTHWESTERN PACIFIC RAILROAD COMPANY VS JULIA C BODKIN, ET AL, RECORDED JANUARY 23, 1912 IN BOOK 140 OF DEEDS AT PAGE 385, MARIN COUNTY RECORDS.

APN'S: PORTION OF 155-010-08; PORTION OF 155-010-03 AND PORTION OF 157-180-03

**PARCEL THIRTY-SIX:**

THE 100 FOOT WIDE PARCEL OF LAND DESCRIBED IN THE FINAL ORDER OF CONDEMNATION DATED JANUARY 12, 1912 IN PROCEEDINGS HAD IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF MARIN ENTITLED, "NORTHWESTERN PACIFIC RAILROAD COMPANY, A CORPORATION,

12393421

**PARCEL 2.**

COMMENCING AT A POINT ON THE EASTERLY RIGHT OF WAY LINE OF THE NORTHWESTERN PACIFIC RAILROAD COMPANY, SAID POINT BEING DISTANT FIFTY-FIVE (55) FEET OPPOSITE FROM AND AT RIGHT ANGLES TO ENGINEER'S STATION 1228 1/2 66 6 OF THE CENTER LINE OF SAID RAILROAD: THENCE RUNNING NORTH 10° 19-1/2' WEST A DISTANCE OF TWELVE AND FIVE-TENTHS (12.5) FEET TO A POINT; THENCE NORTH